



REPORT OF INVESTIGATION

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Retained by: School Committee for the Lowell Public Schools

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I. Scope of Investigation

The School Committee for the Lowell Public Schools (“School Committee”) retained the law firm Brody, Hardoon, Perkins & Kesten, LLP (“BHPK”) to investigate complaints identified by former City Solicitor Christine O’Connor in electronic correspondence to the School Committee dated November 20, 2022. (**Exhibit 1**, “O’Connor Correspondence”). The O’Connor Correspondence contained a description of complaints that Attorney O’Connor had received from certain employees regarding alleged violations of the School District’s hiring policies, Massachusetts Department of Elementary and Second Education (“DESE”) regulations, and state law. Id. Attorney O’Connor further contended that the reports included “[s]pecific claims of retaliation...after individuals reported claims to supervisors, certain members of the Central Office, and the union.” Id. Attorney O’Connor encouraged the School Committee to retain an independent investigator to handle the investigation of these complaints, claiming that “the allegations taken as a whole extend well beyond the otherwise exclusive jurisdiction of available grievance procedures.” Id.

The initial scope of services read as follows:

The Lowell School Committee is seeking to hire counsel to investigate the complaints [referenced in O’Connor Correspondence] and prepare a report with recommendations. The investigation could include interviews with upwards of 10-25 individuals...

(**Exhibit 2**, Scope of Services). Thus, upon assignment of the investigation, the School Committee directed BHPK to investigate the violations of District policies as alleged in the O’Connor Correspondence. Following some publicity surrounding the content of the O’Connor Correspondence, eight additional District employees made complaints to the City Solicitor’s Office. Since the School Committee did not possess these complaints at the time of the initial

assignment of investigation, it later directed BHPK, to the extent that any of these additional disclosures related to subject matter contained in the O'Connor Correspondence, to include those in its investigation.

Approximately one month later, the School Committee broadened the scope of the investigation. In doing so, it posted the following message on the District's website:

The Lowell School Committee has retained the law firm of Brody, Hardoon, Perkins & Kesten, LLP to conduct an independent investigation into allegations of unfair or unlawful employment or hiring practices in the District. If you believe you have relevant information that might be helpful to this investigation, please email investigations@bhpklaw.com.

On May 4, 2023, the School Committee voted to allow complaints to be submitted to BHPK through May 19, 2023, and identified a look-back date as far as five years from the date of the O'Connor Correspondence. This directive was conveyed to the Investigators, with the date of acceptance later extended to May 26, 2023. Between April and September 2023, the Investigators conducted interviews with twenty-three different individuals, not including multiple follow-up interviews and requests for the production of documents, that spanned several months and resulted in the review and analysis of thousands of pages of records.

From the outset of assignment, it was clear that the retention of an outside investigator to investigate the subject matter contained in the O'Connor Correspondence and related issues was a decision that was not universally supported and indeed was, in some instances, adamantly opposed by certain District stakeholders, including several members of the Administration and by at least one union, the United Teachers of Lowell ("UTL").¹ These stakeholders expressed a concern that the Investigators were being directed by the School Committee to wade into personnel matters, and that such forays were circumscribed by statute, policy, and governing collective bargaining agreements. (See e.g., **Exhibit 3**, December 19, 2022 Email from Superintendent Boyd to City Solicitor; **Exhibit 4**, *Confidential* February 17, 2023 Memo from Jim Hall to School Committee; **Exhibit 5**, May 16, 2023 Email from UTL General Counsel to Lowell Solicitor's Office).²

¹ During the interview process, it also became clear to the Investigators that the Lowell School Administrators Association ("LSAA") was also skeptical that the investigators had the authority to investigate matters that they alleged were governed by their collective bargaining agreement.

² That email reads, in pertinent part:

As you know, the United Teachers of Lowell represents teachers, paraprofessionals, custodians and cafeteria workers who work for the Lowell Public Schools. To the extent that this solicitation [as posted by the School Committee] is encouraging UTL bargaining unit members who may have a grievance regarding contract violations to go to the School Committee's agent rather than the Union, it could compromise the ability of the UTL to represent its members and could constitute a violation of Chapter 150E by bypassing the contractual grievance procedures.

The School Committee requested in its initial scope of services, Exhibit 2, that the Investigators “present results ... to the Committee in an appropriate format as deemed by law.” Id. To that end, the act of hiring the Investigators was, in the opinion of the Investigators, lawful because the School Committee holds an express statutory power to hire its own legal counsel to obtain legal advice and for other purposes as provided by the Committee. See M.G.L. c. 71, § 37F. However, as explained below, since the powers of the School Committee are circumscribed by state law, the scope of the investigation was both refined by the Investigators and informed by the finite scope of the School Committee’s legal authority.³ This Report was, therefore, prepared in accordance with these principles and cognizant of such parameters, guided by a hermeneutical lens

We trust that you will post a notice and inform all UTL bargaining unit members that if they have a potential contract violation or potential unfair labor practice issue, that they should contact the United Teachers of Lowell.

BHPK responded: “Please be advised that we have been sharing with complainants that potential violations of the CBA or unfair labor practices can and should be grieved through the bargaining member’s union and that we are not a substitute for that process. We encourage the Solicitor to add your proposed language to the posting.”

³ In investigating and considering recommendations for the School Committee, the Investigators specifically reviewed and considered the statutory delineation of powers between the Superintendent and other administrators and the School Committee, including careful analysis of the roles and responsibilities of each pursuant to statute and regulatory guidance. See, e.g., M.G.L. c. 71, §§ 37, 41, 53, 59, 59A (“The school committee in each city and town and each regional school district shall have the power to select and to terminate the superintendent, shall review and approve budgets for public education in the district, and shall establish educational goals and policies for the schools in the district consistent with the requirements of law and statewide goals and standards established by the board of education.”); (Only the superintendent may hire and fire a principal); (school committee shall appoint school doctors and nurses); (school committee shall appoint positions of assistant or associate superintendents upon recommendation of superintendent); (school committee shall fix superintendent’s compensation and duties). See also Exhibit 6, DESE “Dear Friends” Letter; Sch. Comm. of Pittsfield v. United Educators of Pittsfield, 438 Mass. 753, 760 (2003) (“Prior to passage of the Reform Act, responsibility for hiring and firing teachers resided with the local school committees ... a process that the conference committee’s report described as imposing ‘[b]ureaucratic and political barriers to reform.’”) (internal citations omitted). Under the Reform Act, the School Committee retains “the authority to ‘establish educational goals and policies for the schools in the district’” and the “[r]esponsibility for hiring or terminating a school superintendent.” Id., quoting M.G.L. c. 71, § 37. Superintendents, in turn, are responsible for appointing school principals, while principals assume primary responsibility for hiring, disciplining, and terminating teachers and “other personnel assigned to the school,” subject to the “approval” of their superintendents. M.G.L. c. 71, § 59B. The legislative conference committee’s report was explicit: “Principals will be put in charge of their schools with the elimination of school committee hiring and firing. With increased managerial powers over the day-to-day operations of their schools, principals will be held accountable for performance.” See 1992 House Doc. No. 5750 at 2 (“Principals will be clearly established as part of the management team of the school district...”).

towards providing the School Committee with a comprehensive evaluation of its policies as applied in practice, with recommendations aimed toward achieving forward progress, not past penalization.

In short, the power of the School Committee is circumscribed by its various statutory mandates: in general, it can retain or remove the superintendent or other specific administrative agents over whom it has a specific statutory grant of authority. It can also vote to enact new policies that might effectuate its mandates, amend existing policies, or repeal those that are no longer serving the District. Accordingly, it appears plain to the Investigators that some of the issues raised by various complaints *cannot* be addressed through a School Committee investigation into policy because they constitute purely personnel matters under the statutory purview of the Administration and are governed by collective bargaining contracts.

While the School Committee may, to be sure, discipline or terminate the employment of the superintendent (see M.G.L. c. 71, § 59), it is critical to note that the specific superintendent in place during nearly all of the events which give rise to any timely and relevant complaints (from 2019 – June 2023) resigned during this Investigation. Thus, the power of the School Committee to act is further limited to either promulgating new policies, amending existing policies, or revisiting, revising, revoking, or repealing existing policies, as the acting Superintendent was *not* yet in place during the relevant time period addressed by this Investigation & Report and this Report is not intended to advise the School Committee on policy issues that might have occurred after the May 26, 2023 cut-off date for receiving complaints.⁴

⁴ The Investigators acknowledge that there is one further potential avenue that the School Committee could employ after review of this Report and that is inviting the acting Superintendent to review any specific personnel issues shared with the Investigators to determine if further investigation by the administration – *consistent with any applicable CBA provisions and the strictures of settled labor and employment law mandates and guidance* – is appropriate. The Investigators acknowledge that there is a tension between the power to appoint and remove a superintendent, and the statutory mandate that a School Committee, except in exceptional prescribed circumstances, should not interfere in individual personnel matters. To this end, as we are not general counsel to the School Committee, we defer any legal advisement on this decision to the City Solicitor and Labor Counsel.

In addition, the Investigators draw the School Committee's attention to the general fear expressed by most complainants of retaliation. Investigators, consistent with assurances made by the School Committee, informed complainants that their names would not appear in a public record, that complaints would be anonymized to the extent possible without sacrificing the integrity of the Report, and that information would generally only be shared on a need-to-know basis. The Investigators acknowledge that certain complainants might not have come forward if they believed their complaints would be reviewed by the acting Superintendent, but the School Committee needs to balance that interest against the District's legal obligation to investigate allegations of a certain nature once it is on notice of them. Complainants were informed that there was no guarantee of confidentiality, and the information could be made available to the acting Superintendent without employee names until there is a decision made that a certain complaint compels follow-up by the Administration. The Investigators will otherwise maintain a list of the

II. Methodologies

As mentioned, the prior Administration, at least at first blush, in addition to the Lowell City Solicitor's Office (post the departure of Ms. O'Connor), appeared skeptical of the Investigators' authority to entertain the School Committee's mandate and, accordingly, seemed reluctant to provide information to the Investigators. This position was confirmed after review of several School Committee meetings where members of both the Administration and the City Solicitor's Office presented on this particular topic.

When the Investigators initially received this matter for assignment in March 2023, they observed that the notes received from the Law Department did not sufficiently identify the complainants referenced therein. (Exhibit 7, *Confidential* Letter from Interim Solicitor Williams dated March 29, 2023). Investigators sent follow-up emails to Interim Solicitor Corey Williams on March 31, April 3, April 5, April 10, April 13, April 14, and April 19, 2023 (see Exhibit 8, BHPK letter to Interim Solicitor Williams dated April 19, 2023) seeking additional information about the identities of the complainants and a transcription of the handwritten notes provided.

On April 20, 2023, Mr. Williams provided, by means of a letter to the Investigators, a partial list of the complainants. (Exhibit 9, *Confidential* Letter from Interim Solicitor Williams to Investigators dated April 20, 2023). This list identified the first and last name of four complainants. There were four additional complainants referenced in the materials provided: two employees and two non-employees. The Legal Department had screened out the latter group of non-employees, but nonetheless provided names and telephone numbers for those two individuals. For the remaining two employees, one remained unidentified (no name) and the other was identified only by first name. The Investigators were assured that this was the full extent of the information possessed by the Legal Department.⁵

From the outset, the Investigators have repeatedly emphasized that cooperation was voluntary. In order to prevent any individual from feeling compelled or singled out to participate (see Note 4), the Investigators worked cooperatively with the School Committee, at its urging, to issue a statement that functioned as an avenue for individuals who wished to speak with Investigators to do so. As a result, the following notice referenced above was posted on the School Committee website:

complainants, respondents, and witnesses with whom they spoke during the course of the Investigation.

⁵ The Investigators appreciate that Mr. Williams was adjusting to a new role at the time and note that he was eventually both responsive and cooperative. Once the Investigation was underway, the new Administration was also highly cooperative, and the Investigators applaud Chief Operations Officer Dr. James Hall specifically for his support and responsiveness to producing information despite having reservations about the School Committee's decision to outsource the investigation. The purpose of describing the Investigators' initial efforts here is only to provide context to the various barriers to commencing what ended up being a remarkably lengthy and arduous process.

The Lowell School Committee has retained the law firm of Brody, Hardoon, Perkins & Kesten, LLP to conduct an independent investigation into allegations of unfair or unlawful employment or hiring practices in the District. If you believe you have relevant information that might be helpful to this investigation, please email investigations@bhpklaw.com.

As a result of various factors, including the relative publicity of the Investigation, the number of potential complainants, the limited resources available and the Investigators' mindfulness of costs, and the privacy rights of employees, the Investigators relied on the voluntary cooperation of complainants who affirmatively contacted them (but for those initially identified by the City Solicitor's Office), and did not actively seek out additional complaints from individuals who did not voluntarily participate. This was consistent with the Investigators' mandate as provided by the School Committee.

The Investigators also worked closely with its School Committee contacts to appropriately limit the scope of the Investigation. The basis for this adjustment was twofold: first, initially the School Committee imposed no timeframe within which individuals could submit a complaint. The Investigators ultimately sought permission for a Friday, May 26, 2023 cut-off date, which was approved by the School Committee. Second, the School Committee had not identified a look-back date within which complaints would be received and investigated. When conducting initial interviews, it became clear that several employees wished to share information that had allegedly occurred several years before. In the interest of fairness to any potential respondents and for the sake of economy and efficiency, the Investigators requested that the School Committee narrow the scope of the Investigation to make it time-limited, suggesting a period of no more than three years prior. The School Committee considered the request and later directed the Investigators to investigate unlawful hiring practices that had occurred within five years of the O'Connor Correspondence. For the sake of consistency in conducting each interview in the same manner and according to the same protocol (as the first interviews had been conducted prior to this limiting directive), and in the interest of providing further context to timely complaints, the Investigators advised interviewees that their authority was limited in time, but nonetheless offered each individual interviewed the opportunity to share information related to policy violations that might have occurred outside the delineated period when that information might assist in contextualizing timely allegations. This practice is consistent with generally accepted principles of evidence and investigation.

Critically, during the course of the Investigation, the Investigators also learned that certain administrators were previously made aware of some of the potential policy violations at or around the time that they had occurred and had either already addressed them, or the issues were grieved through a formal grievance procedure or otherwise. Where relevant, the Investigators so note. Where employees voiced complaints to supervisors that a policy had been violated, and where the matters were investigated and adjudicated, such process is generally reflective of a complaint process that appears to be functioning. This point is addressed in greater detail below, but the Investigators were sensitive to the fact that some complaints that were shared with them had already been reported to the Administration, investigated, and fully adjudicated. Consistent with its role as explained above, the Investigators were not retained to evaluate the efficiency or effectiveness of the grievance or complaint process.

Also, during the course of the Investigation, certain other alleged conduct entirely outside the scope of this inquiry but which might warrant further investigation, was disclosed. The Investigators identify those allegations but only for potential referral to the appropriate decision-makers. See Note 4.

III. Sources of Law and Policy⁶

There are multiple state laws, District policies, and collective bargaining agreement (“CBA”) provisions that were potentially implicated by the complaints shared during the course of the Investigation.

District employees can be affiliated or unaffiliated with a union, depending on position. The following CBAs between the District and respective employee unions were potentially connected to disclosures received during the Investigation:

1. the UTL, which represents teachers, paraprofessionals, custodians and cafeteria workers who work for the Lowell Public Schools and are governed by respective CBAs, and amendments and memoranda thereto. (**Exhibit 10**, “UTL CBA”). Each group (teachers, paraprofessionals, custodians, cafeteria workers) has a separate CBA with the District. Id. The only CBA potentially relevant to this Investigation based on the allegations received is that between the District and teachers, as no paraprofessionals, custodians, or cafeteria workers lodged complaints.
2. the Lowell School Administrators Association (“LSAA”), which is governed by a CBA between the School Committee and respective union, which includes District social workers, guidance counselors, and assistant principals. (**Exhibit 11**, “LSAA CBA”).
3. the SEIU, which represents administrative assistants. (**Exhibit 12**, “SEIU CBA”).

Regardless of affiliation (or lack thereof), several of those interviewed as part of the Investigation expressed concern that they might be retaliated against for their participation in the process. As explained below, the Investigators apprised each complainant, witness, and respondent of the limits of confidentiality, and their right to be protected from retaliation.

As mentioned above (see Note 4), multiple employees expressed anxiety about being retaliated against if it was known that they participated in the Investigation. The Investigators

⁶ The Investigators are not experts in the District’s policies. As such, the Investigators were reliant on witnesses to identify the sources of information upon which they relied to justify a particular complaint. It is possible that there are other relevant policies that might apply. The Investigators made an effort to review and analyze every potentially implicated policy identified by a complainant during the course of the Investigation, but this does not mean that every single policy that exists was considered when evaluating the information received and preparing the recommendations contained in this Report.

shared that while the report would be made public, the complainants' identities would be anonymized.

In an effort to reduce any potentially retaliatory action – both implicit and direct – the Investigators have prepared this report in two forms: (1) with the identities of the complainants, witnesses, and respondents, and any personal identifying information, redacted, and (2) in unredacted form, which will at first be held solely by the Investigators until otherwise directed.

Additionally, as the School Committee has not and does not have the authority to direct these Investigators to conduct a personnel investigation into complaints involving any position but that of superintendent, and as the purpose of this Report is to address policy issues in the District, the Investigators have determined, based on employee privacy interests, that not only the identity of the complainants, but also those of the witnesses and respondents should also be anonymized to the extent possible without sacrificing the integrity, functionality, and clarity of the Report. Contra Note 4.

Upon request and with the permission of the School Committee as the client, the Investigators will produce the report in unredacted form to the current Superintendent, who has authority over personnel decisions in the District. See Note 4. From there, the Investigators suggest that the Superintendent, permitting participation from a subcommittee of the School Committee and other relevant administrators, form a task force to fully digest the Report and determine if any additional action is necessary on two separate and distinct fronts: personnel and policy.

As a threshold matter, the complaints received generally fell into three broad categories; the first class of complaints concerned allegations relating to procedural safeguards not being observed; the second class of complaints concerned allegations relating to biases in the hiring process; while the third class of complaints fell entirely outside the purview of the Investigators.

Each category, in addition to the rationale for such classification, is further detailed below.

A. Class 1: Complaints Relating to Procedural Safeguards Not Being Observed.

First, some complainants alleged unfairness in the hiring process and procedures (as opposed or in addition to unfairness in the hiring *outcome*). Such complaints⁷ included the following:

- (1) Position and/or posting descriptions were being arbitrarily changed or removed;
- (2) The policy concerning posting requirements was not being followed;

⁷ The purpose of this summary is to identify the types of complaints the Investigators received; in the Analysis Section of the Report (*infra*), the Investigators address whether a policy exists to address the complaint. If it does not, the Investigators assess whether it should. If a policy does exist which addresses the complaint, the Investigators analyze whether the policy is being followed; whether by following the policy, its intended purpose is being accomplished; and whether the policy should be amended or repealed.

- (3) The policy regarding voluntary and/or involuntary transfers was not being followed;
- (4) Individuals were being hired for positions who did not meet qualification requirements;
- (5) The policy governing interview panels required for certain positions was not being followed;
- (6) The School Committee's "residency" policy was not being followed;
- (7) The policy requiring the District to interview all internal candidates was not being followed;
- (8) The School Committee's policy against nepotism was not being followed;
- (9) The policy requiring candidate notification of hiring decisions was not being followed.

As provided in greater detail below, the Investigators looked to many sources of law and policy to determine the merit of these complaints and what recommendations should be made to the School Committee to potentially enhance, amend, or eliminate policies that fall within its authority. The sources of law contemplated for purposes of the Investigators' analysis included state statute; multiple collective bargaining agreements as listed above; School Committee policies; School Committee motions; written or oral policies of the Superintendent's Office; and various written grievance decisions. It should be noted that the guidance articulated below is not intended to be an exhaustive survey of all applicable policies and laws that were considered when preparing this Report. Rather, the following is merely a particularized list of the policies and laws that these Investigators relied upon in assessing the information gathered during the interviews conducted as part of the Investigation. Sharing them here in this form is intended to orient the reader to the relevant sources of law considered. Please note that the Investigators refer to other sources of law throughout the report when relevant.

1. Sources of law and policy concerning allegations that position descriptions were being arbitrarily changed or removed.

The Professional Staff & Hiring Policy states: "No position may be created without the approval of the school committee." (**Exhibit 13**, Professional Staff & Hiring Policy at p. 2). The UTL governs how postings that are removed or changed should be addressed: "Should the Committee change any of the eligibility requirements, qualifications and/or duties of the posted position, then the vacancy notice shall be reposted in the same manner as articulated in the CBA. (**Exhibit 10**). The LSAA similarly provides: "Should the Committee change any of the eligibility requirements, qualifications and/or duties of the posted position, the vacancy shall be reposted pursuant to this article." (**Exhibit 11**). No SEIU members complained about positions being removed.

2. Sources of law and policy concerning allegations that posting requirements were not being followed.

Generally speaking, the Staff and Hiring Policy (Exhibit 13 at p. 2) states that “It will be the duty of the superintendent to see that persons considered for employment in the schools meet all certification requirements and the requirements of the committee for the type of position for which the nomination is made.” Id.

Posting Requirements for Teacher Positions

There are multiple sources from which teachers are asked to understand who is (and who is not) eligible for a particular position. The LTU CBA, Article XIII, articulates the following on this topic:

1. Whenever any vacancy in any existing or newly created professional position, other than classroom teacher, shall occur, including summer and night school, the Committee shall formulate a written notice of such vacancy or vacancies which shall include all eligibility requirements, qualifications, and duties thereof, and said notices shall be delivered to each work site for posting by the Building Representative(s) and to the President of the Union. No such vacancy or vacancies shall be filled earlier than upon the expiration of twenty calendar days from the date of such delivery of such notice or notices to the work sites.
2. Should the Committee change any of the eligibility requirements, qualifications and/or duties, then the vacancy notice shall be reposted pursuant to this Article.
3. No person shall be hired for such position unless he/she meets the posted qualifications as determined by the Committee.
4. Any teacher possessing the necessary qualification may apply for such vacancy and all applicants shall be considered. All applications shall be in writing and shall set forth the position for which the applicant is to be considered.
5. During summer vacation, job postings shall be made as follows:
 - a. All positions shall be posted at central administration offices.
 - b. A copy of all postings shall be sent to the United Teachers of Lowell.
 - c. All positions shall be advertised in the Lowell Sun (all zones) on two consecutive Tuesdays.
 - d. Applications for the position must be received within twenty-one (21) days after the second ad appears in the newspaper.
 - e. In the case of summer job posting, every effort will be made to post such positions at least ten (10) business days prior to the end of the school year.

(Exhibit 10, Article XIII).

On July 21, 2019, the School Committee and the Teacher's Union entered into a further memorandum of agreement concerning the posting of positions. (**Exhibit 14**, Memorandum of Agreement with LTU, at p. 4). The agreement reads:

1. When a teacher vacancy occurs principals inform the Lowell Public Schools' Personnel Office of open teacher positions within their school buildings. This occurs after the building principal has informed all building staff of the open positions(s) and has considered requests for internal transfers within the building of staff with appropriate certification(s). The internal placement of teachers within the school building is at the principal's sole discretion. After all of the approved internal transfers have been processed, the remaining open positions will be published on the next Compendium and posted for fifteen days on "All Schools" mail and the district's website.

2. A Compendium of Teaching Vacancies shall be posted on February 1. This Compendium shall list all vacancies for the following school year, which have been declared and/or created between July 8 and the last calendar day in January. Subsequent compendia will be posted on April 15, June 1, and July 8. A compendium of teaching vacancies may be posted on December 1 for all "hard to fill" positions provided that a definition for "hard to fill" is mutually agreed to by the union and Superintendent.⁸

3. When a transfer is to be made a teacher's background, certification, quality of teaching performance, skills required by the job and length of service in the Lowell Public Schools shall be considered.

4. All teachers requesting a transfer shall receive written notification from the principal as soon as possible following their interview as to the disposition of their request, but in no case longer than two (2) weeks. On the rare instance that there are fewer than 2 requests for transfer within the pool of applicants for the principal to select from, only then can long-term substitutes and external applicants be considered. Both parties recognize that either party can propose changes to this provision and other provisions in negotiations for a successor agreement.

5. All transfers granted and all permanent hires will be effective the first day of school the following year.

⁸ This appears to be at odds with the process for Posting and Hiring for Open Teaching Positions policy (see Exhibit 13), which states: "The Compendium of Teaching vacancies is published on December 1, February 1, April 1, June 1, and at least once during the summer months. The Compendium is revised at each publication to reflect the new available teaching positions for the next school year. Additionally, a listing of open teaching positions will be published in the Boston Globe."

6. Decisions by the Superintendent, or his/her designee, are final unless arbitrary and capricious

Posting for LSAA Positions

As mentioned, the LSAA is comprised of social workers, guidance counselors, and assistant principals. Article XII of the LSAA CBA (Exhibit 11) explains how the District should post LSAA governed positions:

12-01. Whenever any vacancy or newly created position which is construed by the Committee to be permanent in nature occurs in any member of the Association's position, the Committee shall cause to be published a written notice of such vacancy setting forth the job requirements, job description and salary and time for filing applications. Said notice shall be delivered to the President of the Association whose responsibility shall be to have copies of said notice posted in all school buildings. Except during the months of July and August, no such vacancy shall be filled earlier than upon the expiration of twenty (20) calendar days from the date of delivery of such notice to the President of the Association.

12-02. Should the Committee change any of the eligibility requirements, qualifications and/or duties of the posted position, the vacancy shall be reposted pursuant to this article.

12-03. Any member of the Association possessing the necessary qualifications may apply for such vacancies and all position applicants shall be considered when eligible. All applications shall be in writing and shall set forth the position for which the applicant is to be considered.

12-04. No such vacancy shall be filled during the months of July and August earlier than upon the expiration of ten (10) business days (two calendar weeks exclusive of legal holidays) from the date on which the Personnel Office emails or faxes the notice of a summer posting to the President of the Association or his/her designee.

Posting Requirements for Administrative Assistant Positions

There are no posting requirements required for SEIU positions included in the CBA. (Exhibit 12).

Posting Requirements for Labor Services Positions

The District's Professional Staff & Hiring policy states: The Office of Finance and Operations will post the [labor services] position in accordance to [sic] the collective bargaining agreement..." (Exhibit 13).

3. *Sources of law and policy concerning allegations that voluntary and involuntary transfer policies were not being followed.*

There are several sources of law and policy that the Investigators considered when analyzing the process for voluntary and involuntary transfers. The Investigators suggest that it is helpful to consider the context of how these procedures came to exist, and so they include a relevant analysis here.

Before the passage of the Education Reform Act of 1993, superintendents recommended teachers for hire to the school committee, who held the power to retain them. Following the enactment of Ed Reform, however, principals were given the authority to hire teachers. See, e.g., Lowell School Committee v. United Teachers of Lowell, Local 495, 12 Mass. L. Rptr. 672 (Middlesex Super. Ct. 2001).

The aforementioned decision held that the discretion conferred on school principals by M.G.L. c. 71, Section 59B, as cited supra, applies to transfers just as it does to new hires. Thus, the Legislature appears to have given each principal, subject to approval by the Superintendent, the authority to decide whom to appoint to any open teaching position within a school, choosing from among all qualified applicants, whether already employed in the system or otherwise. The School Committee may not interfere with that authority, either directly by overruling a principal's decision in a particular circumstance, or indirectly by entering into a CBA that would impair it (or that could allow an arbitrator to exceed their authority by deciding the issue). A principal's responsibility for hiring all teachers and other staff assigned to their building includes the discretion to approve or disapprove transfers between buildings within the school district. See, e.g., Sch. Comm. Of Newton v. Newton Sch. Custodians Ass'n., Local 454, SEIU, 438 Mass. 739 (2003). This discretion is nondelegable and cannot be negotiated away through collective bargaining. See, e.g., Lowell Sch. Comm. v. United Teachers of Lowell, 1997 WL 226224 (Mass. Super. Ct. Apr. 25, 1997). See also Berkshire Hills Reg'l Sch. Dist. v. Berkshire Hills Educ. Ass'n, 375 Mass. 522, 527-29 (1978).

Teachers

a. *Voluntary Transfers*

Article XXVIII of the UTL CBA states the following about voluntary transfers:

Consistent with Lowell Public School policy to be respectful of all teachers and staff and with a continuing sense of direction to recognize dedicated and professional service and further, understanding that movement within the District adds vitality by enhancing a sense of new beginnings and excitement, the following will be the procedure for voluntary transfers:

When a teaching vacancy occurs it will immediately be posted for fifteen (15) days on the District's website with access limited to teachers

who are permanent hires. All teachers will contemporaneously be informed via their school email.

Requests for transfer will follow the established protocol of the Human Resource office.

When a transfer is to be made a teacher's background, certification, quality of teaching performance, skills required by the job and length of service in the Lowell Public Schools shall be considered. If other variables are equal, length of service in the District shall be the controlling factor.

All teachers requesting a transfer shall receive written notification from the principal as soon as possible following their interview as to the disposition of their request, but in no case longer than two (2) weeks. On the rare instance that there are no requests for transfer, only then can there be a public advertisement.

All transfers granted and all permanent hires will be effective the first day of school the following school year.

Decisions by the Superintendent, or his designee, are final unless arbitrary or capricious.

(Exhibit 10 at pp. 31-32).

b. Involuntary Transfers

Article XXVIII states the following about involuntary transfers:

Before a teacher is transferred involuntarily effective at the beginning of the next School year, he or she will be notified by June 30th, if possible, in writing by the Superintendent of the reasons for the proposed transfer and shall be entitled to hearing(s) with the Superintendent accompanied by a representative of the Union if he/she desires.

A decision of the Superintendent re: any involuntary transfer of a teacher shall be final and binding and not subject to arbitration. Except in unforeseeable circumstances, the transfer will become effective at the beginning of the school year.

Notwithstanding the above, in the event it is necessary for the Superintendent to transfer involuntarily a teacher due to consolidation or elimination of positions, new programs, reorganization, and/or redistricting, no teacher with seniority will be given a substitute or temporary assignment if the teacher is certified to hold any permanent position that is held by a less senior teacher.

(Exhibit 10 at pp. 31-32).

LSAA Transfers

a. *Voluntary Transfers*

Article XXI of the LSAA CBA states the following with respect to voluntary transfers:

Any Administrator requesting a transfer to an open position in the classification in which the member is now employed shall make such request in writing to the Superintendent of Schools. To effectuate a voluntary transfer, this request must receive the recommendation of the Building Principal, and the transfer request must then be approved by the Superintendent of Schools. For any given position, voluntary transfer requests will be acted upon first.

(Exhibit 11).

a. *Involuntary Transfers*

Article XXI of the LSAA CBA states the following about involuntary transfers:

The Superintendent of Schools may transfer an Administrator to an open position in the classification in which he/she is employed. Reasons for this transfer will be specified to the Administrator in writing before the transfer occurs. Opportunity will be provided for the Administrator and his or her representative to meet with the Superintendent prior to the time for this transfer to take effect.

Administrative Assistants

There are no CBA provisions governing transfers. In the Professional Staff & Hiring policy it states: "Employees requesting voluntary transfers must be interviewed as per collective bargaining agreement. When there is no active Civil Service list, resumes of promising new candidates can be considered for interviews." (Exhibit 13 at p. 6).

The District stopped using the civil service list more than five years ago.

4. *Sources of law and policy concerning allegations that individuals were being hired for positions for which they did not meet the minimum qualification requirements.*

General Laws Chapter 71, § 59B provides that principals are responsible for hiring teachers, subject to the superintendent's approval. In Massachusetts, teachers must meet the certification requirements established by M.G.L. c. 71, § 38G and related regulations (subject to limited exceptions explained below), although a District may require additional qualifications in its hiring.

A teacher with no provisional or standard certificate may be employed only if the superintendent obtains a waiver from the Commissioner of the Department of Elementary and Secondary Education. As a direct result of the COVID-19 pandemic, however, Massachusetts amended Section 38G to make it easier for educators to obtain a provisional licensure.

That statute defines provisional educators and licensure as follows:

“Provisional educator”: a person who holds a provisional educator certificate.

“Provisional educator with advanced standing”: a person who holds a provisional educator certificate with advanced standing; said certificate shall be valid for five years of employment as an educator in the schools of the commonwealth and may be renewed for an additional five years of employment in accordance with regulations adopted by the board.

“Provisional educator certificate”: a license to teach issued to a person who has successfully met the preparation and eligibility requirements as established by the board. The provisional educator’s certificate shall be valid for five years of employment as an educator in the schools of the commonwealth.

The statute, however, makes clear that School Committees retain the power to identify additional qualifications for positions:

No person shall be eligible for employment as a teacher, guidance counselor, director, school psychologist, school adjustment counselor, school social worker, school nurse, library media specialist, school business administrator, principal, supervisor, director, assistant superintendent of school, and superintendent of schools by a school district unless he has been granted by the commissioner a provisional, or standard certificate with respect to the type of position for which he seeks employment; provided, however, **that nothing herein shall be construed to prevent a school committee from prescribing additional qualifications**; and provided further, that a superintendent may upon request be exempt by the commissioner for any one school year from the requirement in this section to employ certified personnel when compliance therewith would in the opinion of the commissioner constitute a great hardship in securing teachers for that school district.

Id. (emphasis added).

Massachusetts regulation 603 CMR 7.01 further defines the term “License”: Any credential issued to an educator as specified in 603 CMR 7.04(1). The terms “license” and

“licensure” as used in 603 CMR 7.00 are equivalent to the terms “certificate” and “certification” as used in M. G. L. c. 71, § 38G.

During the COVID-19 pandemic, the state legislature passed a law stating that the Department of Education Commissioner may issue educator licenses on an emergency basis during the period of the state of emergency and for a period of 180 days after the termination of the state of emergency, which occurred on May 11, 2023. The Department of Education has since issued a statement that Tuesday, November 7, 2023, will be the last day that an individual can apply for and/or be issued an Emergency License. See Office of Educator Licensure, Deadline to Apply and Obtain an Emergency License, available on the DOE website.

There are two different Emergency Licenses issued by DESE: (1) “New Emergency” licenses, which are defined as having been issued between May 26, 2022 and November 7, 2023 and are valid for one calendar year and may be extended twice through November 7, 2023 and (2) “Old Emergency” licenses, or licenses issued between June 2020 and December 12, 2021, which are eligible to be extended through June 30, 2024. Note that “Old Emergency” licenses are no longer issued but can be extended.

With respect to licensure, The Professional Staff and Hiring Policy states:

“To apply for an administrative or teaching position, applicants must submit ... copy [sic] of the appropriate Massachusetts educator license to the Personnel Office prior to 4:00 p.m. on the posted closing date ... Massachusetts Teacher/Administrator Licensure: Appropriate licensure (certification) by the Massachusetts Department of Education (DOE) is required for Massachusetts public school teachers and administrators.

(Exhibit 13 at p. 1).

The policy further states that, with respect to administrative positions:

After a twenty (20) day posting period, a screening committee comprised of district administrators is formed to select the most qualified candidates. The most qualified candidates are those who meet the job/educational background/licensing requirements and are subsequently recommended for interview.

(Exhibit 13 at p. 6).

The Professional Staff and Hiring policy further requires that “certifications (if applicable)” be submitted with the application. (Exhibit 13 at p. 2).

Additionally, the UTL CBA provides that “[n]o person shall be hired for such position unless he/she meets the posted qualifications as determined by the Committee.” (Exhibit 10 at Article XIII (c)(3)).

Finally, the LSAA CBA states that “any member of the Association possessing the necessary qualifications may apply for such vacancies and all position applicants shall be considered when eligible.” (Exhibit 11, Article XII).

The SEIU CBA does not articulate any restrictions on qualifications for the hiring of SEIU positions.

5. Sources of law and policy for allegations concerning the convening of committees during the interview process.

The Professional Staff and Hiring policy identifies two distinct types of committees that can be employed when conducting interviews of candidates. For “administrators,” the committee to be utilized is referred to as a “Personal Advisory Committee” and was frequently referred to in interviews as a “supercommittee.” (Exhibit 13 at p. 6). This type of committee is comprised of an eight member panel including: “(1) administrator, (2) teachers, (2) parents, (1) expert provider, (1) University or Higher Education Representative and (1) Community Representative.”

A separate provision in the Professional Staff & Hiring policy captioned, “Principal and Senior Administrative Positions” further states:

For principal positions and senior administrative positions, the administrator responsible for hiring of a staff member shall form a screening panel comprised of at least 8 people, consisting of at least 1-2 administrators and 2-3 teachers. The panel shall also include three or more of the following: an expert provider, University or Higher Education Representative, parent, student, and/or a Community Representative depending upon the nature of the position in the panel convener’s discretion.

(Exhibit 13 at p. 11).

The second type of committee, called a “School-based interview team,” is comprised of a principal, representative teaching/paraprofessional staff, expert providers, and school site council representatives (parents) who “must be formed to screen resumes of candidates and conduct interviews of all permanent teacher transfer requests and the other qualified candidates selected for interview.” (Exhibit 13 at p. 7).

With respect to SEIU members, the Professional Staff and Hiring policy states: “School based interview team consisting of the principal and their designees must be formed to conduct interviews of all permanent transfer requests. Not all other qualified candidates have to be selected for an interview.” (Exhibit 13 at p. 6).

6. Sources of law and policy concerning allegations that Lowell residents are not automatically being interviewed for positions.

On May 4, 2016, the School Committee unanimously voted to issue the following directive: “Request the Superintendent to adopt a policy for interviewing applicants which mandates that Lowell residents receive interviews for jobs in the Lowell Public Schools.” (Exhibit 15, School Committee Minutes dated May 4, 2016 re: Residency at p. 3).

Following this vote, it appears that former Superintendent Salah Khelfaoui obliged this request and implemented a practice that Lowell residents should be afforded interview priority for positions. Superintendent Khelfaoui left the district in July 2018. No written policy, however, was ever promulgated during his tenure, nor has one been promulgated since.

While there is presently no requirement that Lowell residents be hired (rather, the initial School Committee “request” was that they be interviewed), the Investigators note that the practice is in tension with M.G.L. c. 71 § 38 which states:

No school district shall require that an individual reside within the city, town or regional school district as a condition of promotion, assignment, transfer or continued employment as a school teacher, instructional aide, assistant principal, principal, director, supervisor, deputy superintendent or professional employee; provided, however, that the provisions of this paragraph shall not apply to any individual appointed, reappointed or promoted to the position of superintendent, associate superintendent or assistant superintendent.

There is also a direct conflict with the District’s policy that requires “no discrimination in the hiring process due to age, sex, creed, race, color, national origin, disability, sexual orientation or **place of residence.**” (emphasis added) (Exhibit 13 at p. 1).

7. Sources of law and policy concerning allegations that internal applicants were not being considered for positions.

Notably, teachers, members of the SEIU, and unaffiliated staff complained about an alleged failure to consider internal candidates.

Teachers

The Compendium process is detailed above. (See also Exhibit 14 at p. 4).

LSAA

Exhibit 11 Article XII-03 states that any member of the Association possessing the necessary qualifications may apply for such vacancies and all position applicants shall be considered when eligible. All applications shall be in writing and shall set forth the position for which the applicant is to be considered.

SEIU

There is no language in the SEIU contract nor in the District’s hiring policies regarding internal candidates. However, the District’s policy states:

Voluntary transfer requests must be sent to the office of Finance and Operations in writing. These requests are compiled [sic] then are e-mailed and faxed to principals

with an accompanying interview form. Employees requesting voluntary transfers must be interviewed as per collective bargaining agreement.

(Exhibit 13 at p. 8).

As stated, the SEIU CBA does not describe this process.

8. *Sources of law and policy concerning allegations that nepotism policies are not being followed.*

On September 3, 2014, the School Committee voted 4-3 in favor of the following motion. (Exhibit 16, September 3, 2014 School Committee Minutes re: Nepotism at p. 9). The minutes from that meeting read as follows:

A motion was made to recommend to the full School Committee that the legal opinion and recommendation of the City Solicitor's Office be rejected, and that the School Committee implement a ban on the hiring of immediate family members of School Committee members and administrators altogether, while grandfathering any previously hired family members.

Notably, this is a far more restrictive position than is required by state law, which provides:

A school district shall neither (i) employ a member of the immediate family of a superintendent, central office administrator, or school committee member, nor (ii) assign a member of the immediate family of the principal as an employee at the principal's school, unless written notice is given to the school committee of the proposal to employ or assign such person at least two weeks in advance of such person's employment or assignment.

M.G.L. c. 71 § 67. The Investigators were not provided with any information to support that there was ever any subsequent School Committee vote to formally adopt a policy on nepotism, only to reject the recommendation of the Solicitor. Accordingly, there appears to be no written nepotism policy.

9. *Sources of law and policy concerning allegations that candidates are not being notified of hiring decisions.*

Only applicants for administrative positions lodged complaints that they had not received proper notification of hiring decisions. Nonetheless, the Investigators include the procedure for notifying teachers and administrative assistants, in addition to administrators, to draw attention to the fact that the notification schemes could (and, as will be explained below, should) be streamlined for consistency.

Teachers

The District's policy states, "The principal is responsible for...notifying all [teacher] candidates of the outcome of the team's decision immediately after the interviews are conducted." (Exhibit 13 at p. 5). The Investigators did not receive any complaints that would fall under this policy.

Administrators

The District's policy states, "The Personnel Office notifies each [administrator] candidate of the decision." (Exhibit 13 at p. 6).

Administrative Assistants

There is no policy in either the Professional Staff and Hiring Policy nor in the SEIU CBA regarding notification.

B. Class 2: Complaints Concerning Alleged Bias

The second category of complaints that the Investigators received involved alleged bias in the selection or hiring of candidates. These types of complaints generally involved allegations of bias by hiring committee panelists or appointing authorities. Many of the complainants subjectively felt that they would never be hired for certain positions due to a bias against them. This class of complainants also alleged, in part, that unqualified individuals had been selected because they were "connected" to decision-makers.

There were also allegations that individuals were being selected for positions based on their membership in a protected class (Investigators received complaints alleging both that White-identifying candidates were given preferential treatment and also that BIPOC-identifying candidates were preferred. Neither of these complaints formed the basis of a noticeable trend in the reports received by the Investigators and were largely isolated to individual hiring decisions). Others alleged that certain candidates received "reversionary" rights to their full-time position while serving in an interim position, where others did not, and that this was allegedly based on gender or race.

There are several sources of law, some of which have been described in detail above, that the Investigators considered when analyzing complaints of bias. In addition to those already cited, the Investigators considered the non-discrimination in hiring policy which states: "There will be no discrimination in the hiring process due to age, sex, creed, race, color, national origin, disability, sexual orientation or place of residence." (Exhibit 13 at p. 1).

The Investigators have seen no Lowell policies concerning conflict of interest when evaluating who may serve on an interview panel or participate in hiring decisions.

C. Class 3: Allegations Outside the Scope

The third category of complaints did not concern hiring practices, but were issues raised regarding policies more generally being inequitably applied. These included complaints

concerning disparate pay; unfair decisions to retract positions; criticisms about the failure to make a job union-protected; and unfair termination decisions. These allegations were strictly personnel related, and thus fell outside the scope of the Investigation. These complainants were informed of such, but since these issues were raised during interviews, to the extent that they might bear on the hiring policy and practices concerns that were to be addressed by the Investigation, they are nonetheless included as part of the summaries below, both in the interest of fairness and transparency.

IV. Witnesses


The following individuals were interviewed as part of the Investigation, in the following order:⁹

[REDACTED]

The following individuals contacted the Investigators and either declined an interview or stopped responding to requests for one:

⁹ [REDACTED] was questioned by email but was not interviewed. The Investigators also communicated with various members of the Administration in order to gather evidence and records, but only sought interviews when necessary.

¹⁰ [REDACTED] was interviewed as a complainant but was later contacted to respond to allegations made against [REDACTED]. [REDACTED] initially responded, but a second interview was never scheduled after the interviewee stopped responding to scheduling correspondence.



The Investigators explained their role to each witness, as provided at the outset of this Report. The Investigators further explained to each witness the limits of confidentiality, and that information would be shared only on a “need to know basis.” Each witness was advised that retaliation for participation in the investigation process is unlawful and to inform the Investigators if they were subjected to any retaliation. Additionally, each witness was cautioned not to retaliate against others for their participation. Finally, the investigators gave each witness the option of being recorded as work product, solely in an effort to assist the Investigators in note taking and compiling information later in the process.

V. Documents and Materials Reviewed

The Investigators reviewed a voluminous number of records provided by the District upon request and by various interviewees during the course of the Investigation. Do note that the Investigators made absolutely no markings on the exhibits received. Many of them, however, were produced and are incorporated herein with the markings that were part of the records upon submission.

The Investigators elected to include here only materials that they deemed to be materially relevant to the analysis contained in this Report. The exhibits enclosed are:

1. O’Connor Correspondence (Exhibit 1);
2. Scope of Services (Exhibit 2);
3. Email from Superintendent Boyd to City Solicitor dated December 19, 2022 (Exhibit 3);
4. *Confidential* Memo from Jim Hall to School Committee dated February 17, 2023 (Exhibit 4);
5. Email from UTL General Counsel to Lowell Solicitor’s Office dated May 16, 2023 (Exhibit 5);
6. DESE “Dear Friends” Letter (Exhibit 6);
7. *Confidential* Letter from Interim Solicitor Williams dated March 29, 2023 (Exhibit 7);
8. BHPK Letter to Interim Solicitor Williams dated April 19, 2023 (Exhibit 8);
9. *Confidential* Letter from Interim Solicitor Williams to Investigators dated April 20, 2023 (Exhibit 9);
10. UTL CBA (Exhibit 10);

11. LSAA CBA (Exhibit 11);
12. SEIU CBA (Exhibit 12);
13. Professional Staff & Hiring Policy (Exhibit 13);
14. Memorandum of Agreement with LTU (Exhibit 14);
15. School Committee Minutes dated 5.14.16 re: Residency (Exhibit 15);
16. School Committee Minutes dated 9.3.14 re: Nepotism (Exhibit 16);
17. Human Resources Audit dated November 29, 2018 (Exhibit 17);
18. *Confidential* Undated Complaint to School Committee (Exhibit 18);
19. *Confidential* Application and Hiring Materials for Chief Equity & Engagement Officer (Exhibit 19);
20. *Confidential* Licensure (Exhibit 20);
21. *Confidential* Materials related to Executive Secretary to Facilities Director position (Exhibit 21);
22. *Confidential* 2021 Student Support Specialist Materials (Exhibit 22);
23. UTL Salary Grid (Exhibit 23);
24. *Confidential* Discrimination Complaint (Exhibit 24);
25. Instructional Specialist Posting (Exhibit 25);
26. Math Coach Posting (Exhibit 26);
27. *Confidential* Email Correspondence with Union (Exhibit 27);
28. *Confidential* Personnel File of Investigation Complainant (Exhibit 28);
29. *Confidential* Timeline from Investigation Complainant (Exhibit 29);
30. *Confidential* Materials related to Student Support Specialist Grievance (Exhibit 30);
31. *Confidential* Investigation by Jim Hall (Exhibit 31);
32. Lowell Sun Article dated February 12, 2023 (Exhibit 32);

33. Podcast Recording dated February 13, 2023 (Exhibit 33);
34. *Confidential* Written Warning (Exhibit 34);
35. *Confidential* Application Materials for Assistant Principal Position at An Wang Middle School (Exhibit 35);
36. *Confidential* Moody Elementary School Application Materials (Exhibit 36);
37. *Confidential* Cardinal O'Connor School Application Materials (Exhibit 37);
38. *Confidential* Grievance Decision dated August 15, 2022 (Exhibit 38);
39. *Confidential* Personnel Records re: Reilly School (Exhibit 39);
40. *Confidential* Human Resources Generalist Application Materials (Exhibit 40);
41. *Confidential* Complaint and Request to Investigate dated June 2, 2023 (Exhibit 41);
42. *Confidential* Non-Renewal Records (Exhibit 42);
43. *Confidential* Application for Executive Secretary to the Special Education Director (Exhibit 43);
44. *Confidential* Application Materials for Executive Secretary for Teaching and Learning Position (Exhibit 44);
45. *Confidential* Application Materials for Eighth Grade Coordinator Position (Exhibit 45);
46. *Confidential* Application Materials for Director of Freshman Academy (Exhibit 46);
47. *Confidential* Application Materials for Bridge School Principal (Exhibit 47);
48. Posting for Health Teacher Position (Exhibit 48);
49. *Confidential* Memo from Jim Hall dated January 12, 2023 (Exhibit 49);
50. Evaluation Forms (Exhibit 50);
51. *Confidential* Application Materials for Assistant Principal of Freshman Academy Position (Exhibit 51);
52. *Confidential* Complaint and Request to Investigate dated August 21, 2023 (Exhibit 52).

VI. Information Conveyed During Interviews & From Record Review¹¹

1. In 2018, the School Committee hired Human Resources Services, Inc. to conduct an audit and issue a report. (**Exhibit 17**, Human Resources Audit dated November 29, 2018).
2. The findings included, *inter alia*, that “there was an underlying frustration and alienation with poor communication from various schools/departments when communicating with the Human Resources Department ... To state it simply, HR is not responding to the various department/school needs in a timely manner with regards to hiring, retirement, termination, discipline.” (**Exhibit 17** at p. 10).
3. The Audit also found: “The hiring process at Lowell Public School is a multi-step, cumbersome, overall manual process ... The Consultants heard that the hiring process at Lowell Public Schools is too slow and that there appears to be a lack of consistency. There is also mistrust with a number of employees stating that the Human Resource Department lacks transparency in the hiring process ... Although infrequent, it was mentioned by a few employees that the hiring process was circumvented entirely in rare instances...” (**Exhibit 17** at p. 14).
4. In March 2020, the COVID-19 pandemic impacted the District, forcing it to shut down and significantly disrupting the functionality of the workplace for approximately two years.
5. Most of the recommendations from the Audit were never implemented. (Interview of [REDACTED], “[REDACTED] Interview”).
6. There are approximately 2000 employees in Lowell School District. ([REDACTED] Interview).
7. As of January 2019, there were only four full-time HR employees and one part-time employee to serve the entire District. ([REDACTED] Interview).
8. In November 2022, the HR Department was down to three full-time employees and one part-time employee. ([REDACTED] Interview).
9. As of September 2023, there are now five full-time human resources employees, and two part-time employees. ([REDACTED] Interview).
10. On a year-to-year basis, there are approximately 150-180 positions advertised and filled through the Compendium. ([REDACTED] Interview).
11. On a year-to-year basis, there are approximately 350-400 positions filled generally, including part-time positions. ([REDACTED] Interview).

¹¹ Some complainants raised multiple concerns that spanned over the course of the five-year “look-back” period. For sake of clarity, and for purposes of the School Committee understanding the nature of the complaints in a broader context, Investigators chose to present allegations in chronological order.

- [illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 3: Bias in re: hiring of the Chief and Equity Engagement Officer, 2019

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 4: Bias in re: hiring of the Facilities and Administration Assistant Position, 2019

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 5: Bias in re: hiring of the Executive Secretary to the Special Education Director, 2020

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 6: Bias in re: School Committee Revision of Licensure Requirements for Chief Equity Engagement Officer, 2020

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 7: Process Failure for Student Support Specialist Position, 2021

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 8: Process Failure and Bias in re: Community Schools Program Manager position, and subsequent retaliation, 2021

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 9: Bias in re: hiring of the Executive Secretary for the Office of Equity and Empowerment, 2021

[REDACTED]

[REDACTED]

Allegation 10: Process Failure in Hiring Instructional Coach, 2021

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 11: Process Failure in hiring of Math Coach, 2021

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 12: Bias in re: hiring of Interim Assistant Principal at the Reilly School

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 13: Process Failure in hiring of Data Positions, 2021

[REDACTED]

[REDACTED]

Allegation 14: Bias in re: hiring of Executive Secretary for Teaching and Learning, 2021

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 15: Bias in re: hiring of Eighth Grade Coordinator, 2022

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 16: Bias in re: hiring of Director of Freshman Academy, 2022

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 17: Bias in re: hiring of Bridge School Principal, June 2022

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 18: Bias in re: hiring of the Freshman Academy Assistant Principal Position, 2022

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 19: Process Failure and Bias in re: hiring Student Support Specialist position, 2022

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
 [REDACTED]
 [REDACTED]

Allegation 20: Process Failure in re: hiring of the Mental Health Director Position, 2022

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 21: Discrimination in the Workplace, 2022

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 22: Bullying in the Workplace, 2022

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 23: Process Failure in re: hiring of the Assistant Principal of Bridge Program, 2022

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 24: Process Failure in re: hiring of the Assistant Principal of Dr. An Wang Middle School, 2022

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 25: Unfair Termination Process, 2022

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 26: Bias in re: hiring of a teaching position at the Moody School, 2022

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 27: Process Failure re: teaching position at the Cardinal O'Connell School, 2022

[REDACTED]

[REDACTED]

Allegation 28: Process Failure re: Health Teacher position, 2023

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 29: Nepotism & Process Failure in Internal Transfers, 2022

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 30: Bullying by the Office of Equity, 2022

[REDACTED]

[REDACTED]

Allegation 31: Unfair hiring and Bias in the position of the Administrative Assistant Position, 2022

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 32: Restriction on workplace speech, 2022

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 33: Unfair Benefits to Out-of-District Students, 2022

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 34: Age Discrimination in re: Homeless Liaison Role, 2022

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 35: Bias in re: Human Resources Generalist position, 2022

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 36: Unfair Alteration of Job Description in re: Director of English Learning, 2022

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 37: Bias in re: Family Resource Center position, 2023

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 38: Union-affiliation Discrimination in re: Secretarial Opening, 2023

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 39: Employees exceeding scope of their employment, 2023

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Post-Interview Cut-Off Complaints

As explained in the Scope of Investigation section above, the Investigators provided notice that they would not be accepting complaints after May 29, 2023. Nonetheless, they received additional complaints via email that are articulated below. As these complaints involved allegations of retaliation for participation in this Investigation, the Investigators include them here.

Notably, while not fully investigated for reasons explained in great detail in this Report, the Investigators note that they did not disclose the complainants' participation in the Investigation to any of the individuals supposedly responsible for taking any "adverse action" against the complainants. Further follow-up by the appropriate personnel might be warranted.

Allegation 40: Retaliation for Participating in this Investigation, 2023

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation 41: Retaliation for Participating in this Investigation, 2023

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

V. Findings, Analysis & Recommendations

As a threshold matter, the Investigators advised that the scope of this Investigation be clarified, narrowed, and/or limited to some extent on various occasions throughout the initial process. The School Committee nonetheless voted to commit to an investigation into the complaints referenced in the O'Connor Correspondence, as well as to any "allegations of unfair or unlawful employment or hiring practices in the District" for the past five years. (School Committee Online Notice of Investigation). The School Committee requested that the Investigators, using their discretion, accept complaints regardless of the degree of relation to "hiring". The Investigators followed this directive within the parameters set forth in the Scope of Investigation Section above, and cognizant of the confines of the School Committee's authority as articulated in the Section III: Sources of Law & Police, supra.

Typically, an investigation involves a limited number of complaints with a directive to determine if there was a violation of a specific policy. This Investigation involved a total of forty-one (41) distinct complaints without regard to the identification of any particular policy to consider, leaving the Investigators to discover which, if any, policies and practices might be implicated. As detailed above in Section III: Sources of Law & Policy, there are a myriad of policies that *could* be considered when evaluating hiring-related concerns. Notably, the District is a party to six different CBAs. The School Committee also promulgates policies independent of those contracts. The Superintendent promulgates both written and unwritten policies and adopts practices that are then followed by the Administration.

The notice adopted by the School Committee ultimately invited individuals to come forward with complaints relating to hiring and employment matters ranging from those that they subjectively perceived to be "unlawful" to those that they subjectively perceived to be "unfair." The latter was often understood colloquially, meaning that several complainants articulated a subjective belief that a process or decision was "unfair" but were unable to articulate a basis that would implicate an actual policy. Regardless, the Investigators have recommended that the School

Committee share a copy of this Report with the Superintendent and City's Legal Department to review and determine if any of the personnel issues conveyed to the Investigators warrant further action on the part of the Administration.

In addition, inevitably, some complainants took the opportunity to speak with Investigators about concerns regardless of whether their complaints fell within the scope of the Investigation and despite being so advised. As the Investigators were retained by the School Committee and served as its agents, it is necessary that the District understand that it is likely imputed with notice of the complaints contained in this Report, which might require further action by the Superintendent. These Investigators were not retained to, nor do they or can they, make any recommendations here about specific personnel matters or decisions. As the Investigators outlined at the outset of this Report, while the Investigators believe the School Committee possesses the authority to investigate issues that might impact their policy-making decisions, the Investigators recommend that, in the future, the School Committee consider a more focused approach to determining the impact of a specific policy. To that end, it is the recommendation of these Investigators that the School Committee retain its own counsel per its statutory authority, separate from Labor Counsel and the City Solicitor's Office, to routinely advise it on an independent basis regarding policy decisions, particularly in situations where there is a palpable tension between the School Committee, Administration, and City's Legal Department, as was undoubtedly the case here.

A word on policies generally: the Investigators reviewed several policies and collective bargaining agreements, as well as School Committee minutes and recordings. Many of the policies implicated by this Investigation are vague and ambiguous as drafted, and at times are in conflict with the relevant collective bargaining agreements. Naturally, this conflict should be eliminated. Moreover, outdated policies, such as those containing language that is no longer applicable, i.e. policy provisions concerning civil service, should be removed without the need for any significant debate. Critically, the hiring policy of the School Committee has not been updated in nearly twenty (20) years. These Investigators strongly recommend that the School Committee revisit the Professional Staff & Hiring policy in its entirety. Independent of futility concerns, the Investigators found that several of the policy provisions could benefit substantially from revisions related to language and drafting choices; as one example, the language contained in the policies frequently employs the passive voice, which only contributes to the misinterpretation and inconsistent interpretation/implementation of these policies.

Moreover, there are instances, as are explained in greater detail infra, where the School Committee appears to walk close to the line of what is permitted by state statute. To that end, the Investigators offer insight into why they recommend that certain policies be repealed, revoked, or replaced.

To support clarity and ease of reading, the Investigators have subdivided this section of the Report to mirror Section III, Sources of Law and Policy. Thus, the first part of the analysis addresses allegations relating to procedural safeguards not being observed; the second part addresses allegations of bias in the hiring process; and the final part considers complaints that were received that did not necessarily fit the parameters of the Investigation, but nonetheless might inform the School Committee's reconsideration of the policies and practices that are currently

being employed in the District. As a final disclaimer, as was conveyed several times herein, it is the intent of the Investigators to make recommendations that are within the purview of the School Committee and in no way do the Investigators suggest that the School Committee act outside of its statutory authority or in violation of any of the several governing CBAs. Moreover, the Investigators evaluate complaints by a preponderance of the evidence standard, which means that there is sufficient evidence to support that a claim is more likely than not true versus untrue.

One final word of caution: just because the Investigators conclude that there was insufficient evidence to sustain a claim, does not necessarily speak to the veracity of that complaint under any conceivable set of circumstances, nor does it mean that there is no evidence that *might* exist to support a claim. The Investigators' review and analysis is based solely on the information and records that it was able to obtain from the District and/or that were voluntarily provided by complainants, respondents, and witnesses. The information below constitutes the opinion of the Investigators based on their review of the relevant evidence before them.

The allegations were assigned a number in Section IV, supra, which was organized in chronological order. For the sake of consistency and ease of reference, as this section (Section V: Findings, Analysis & Recommendations) is organized by the three classes of complaints outlined in Section III (Sources of Law & Policy), the Investigators cite to the allegation number assigned in Section IV so that the material can be more readily cross referenced. Due to the fact that several of the allegations numbered in Section IV implicated multiple classes of complaints, there are instances where an allegation number might be listed more than once in this analysis.

Analysis of Class 1 Complaints: Complaints Relating to Procedural Safeguards Not Being Observed

1. *Complaints concerning positions being arbitrarily changed or removed.*

Allegation No. 8

The Investigators do not find by a preponderance of the evidence that there was a policy violation in the creation of the position of Community Schools Program Managers by the School Committee.

The subject complainant alleged that the job description for Community Schools Program Manager should not have required a teaching degree because it was a non-teaching position.¹² The Professional Staff & Hiring Policy states: "No position may be created without the approval of the school committee." (Exhibit 13).

¹² This is an example of a complainant alleging that the District was engaged in an "unfair hiring practice" that the Investigators struggled to classify. The complaint consisted of only one person's subjective belief that the decision to create a union position, which was approved by both the UTL and the School Committee, "felt" unfair to them.

As the position was created with the approval of the School Committee, the Investigators find that there was no policy violation.

Allegation No. 20

The Investigators do not find by a preponderance of the evidence that there was a policy violation in the creation of the position of Mental Health Director.

In September/October 2022, the subject complainant applied for the Mental Health Director position. After they were interviewed and conditionally offered the job, the LSAA appears to have objected that the position had not been posted to School Spring and requested that it be amended to match other coordinator positions in all relevant respects.

As it appears to have been the union that was the driving force behind the changes at issue, the Investigators find that there is insufficient evidence to support that a policy violation occurred.

Allegation No. 36

The Investigators do not find by a preponderance of the evidence that there was a policy violation in the creation of the position of Director of English Learning.

The position of Director of English Learning was approved by the School Committee in response to an outside review of the English Language Department. This was created as a nonunion position. While the subject complainant might have subjectively felt that this was unfair to them because the job duties overlapped with their current position, the process for the creation of the position itself appears to have been followed. On November 17, 2022, the complainant learned that the School Committee had voted not to move forward with the creation of the new position, which, on these facts, is within their purview.

RECOMMENDATION: It is understandable and, sometimes, unavoidable that employees will feel subjectively slighted if they apply for a position and it is subsequently amended or removed, and the Investigators encourage the School Committee, the Administration, and the respective unions, when applicable, to make every effort to ensure that position descriptions are accurate and commit to finalizing positions before they are advertised.

2. *Complaints concerning postings for teachers and administrators.*

Allegation No. 10

The Investigators do not find by a preponderance of the evidence that there was a policy violation in the posting of the position of the Instructional Coach.

The subject complainant complained that the position was never posted. The Investigators find that it was. (See Exhibit 25).

Allegation No. 11

The Investigators do not find by a preponderance of the evidence that there was a policy violation in the posting of the position of Math Coach.

The subject complainant alleged that the position was never posted. The Investigators find that it was. (See Exhibit 26).

Allegation No. 28

The Investigators do not find by a preponderance of the evidence that there was a policy violation in the posting of the Health Teacher position.

The subject complainant alleged that the School posted the position in the middle of the year. The Compendium does not come out until January of the following year after a position is available; in the interim, long-term substitutes are permitted to serve. It appears to be the practice of the District to retain daily substitute teachers to fill a role while it searches for a permanent replacement. The interim employee was hired and treated as a long-term substitute (Exhibit 48).

3. *Complaints concerning internal transfers.*

Allegation No. 29

The Investigators do not find by a preponderance of the evidence that there was a policy violation in the internal transfer of a physical education teacher in 2022.

For a full discussion of this, please see the section related to Nepotism (infra).

Allegation No. 13

The Investigators do not find by a preponderance of the evidence that there was a policy violation with respect to the hiring of data positions in 2021. On August 16, 2021, the subject complainant applied for two open data positions, both of which were unaffiliated with any union. The complainant was not interviewed for either of the positions but nonetheless felt they should have been.

In the Professional Staff & Hiring policy it states: “Employees requesting voluntary transfers must be interviewed as per collective bargaining agreement. When there is no active Civil Service list, resumes of promising new candidates can be considered for interviews.” (Exhibit 13 at p. 6). As the District stopped using the civil service list more than five years ago, and the complainant was not a union member and the position were not governed by a CBA, the Investigators find that there was no policy violation.

RECOMMENDATION: This policy is both outdated and confusing. As written, the following rules can be understood as follows:

- 1) If a professional staff member's collective bargaining agreement requires an interview *and* the professional staff member is seeking a voluntary transfer, then that staff member must be interviewed.
- 2) If a professional staff member's collective bargaining agreement does not require an interview *and* the professional staff member is seeking a voluntary transfer, then that staff member need not be interviewed.
- 3) If a professional staff member is unaffiliated *and* the professional staff member is seeking a voluntary transfer, then that staff member need not be interviewed.

The Investigators find that this policy is extremely confusing and must be revised to, at the very least, remove the reference to Civil Service. The policy should also be clarified as to unaffiliated employees and the language amended to more clearly convey the intent of the policy.

Additionally, the Investigators recommend that the School Committee consider, when enacting future policies and negotiating future CBAs, that policies should generally – without a specific and narrowly tailored justification – refrain from functioning to either limit the pool of qualified applicants or force the Administration into conducting interviews of candidates who are not necessarily qualified or suited for the role. The School Committee should consider whether a more rigorous screening process is appropriate in order to set the pool of applicants, and then should consider permitting the hiring authority to screen the appropriate individuals to interview, so long as this approach remains consistent with any applicable CBA provisions. This is particularly critical in situations where transfers are time sensitive. While conducting this Investigation, the Investigators received feedback on multiple occasions that hiring decisions were delayed because of the extremely onerous hiring process, which means that the student population could be suffering because of unnecessarily restrictive hiring policies. For example, requiring interviews for Lowell residents or for internal applicants, without more, does not appear to accomplish what the School Committee might have intended by adopting such policies.

Finally, it should be noted that administrators described filling dozens, and up to hundreds, of positions every year, many for which they receive several applications. There was some concern that some internal employees apply to positions merely because they are available, rather than because they are particularly qualified, which might compel an interview in certain circumstances. Having a policy that blanketly mandates every internal applicant be interviewed, in theory might confer a benefit on current employees, but it is the opinion of these Investigators that it is neither a cost-effective nor efficient use of the Administration's time or resources.

4. *Complaints relating to hiring decisions where the selected candidate did not meet the minimum qualification requirements.*

Allegation No. 35

The Investigators do not find by a preponderance of the evidence that there was a policy violation in the hiring of Human Resources Generalist position in November 2022.

On November 12, 2022, the subject complainant interviewed for the position. The complainant alleged that an administrator told them that they “did not have a prayer in the world

of being hired” for that position and that they and their husband were on former Superintendent Boyd’s “do not rehire, do not promote, do not give a raise” list.

The Investigators credit the subject respondent’s statement that they never made any of these statements and credit their statement that they had never heard of such a list. The Investigators note that this particular respondent presented as forthright and highly credible in his interview.

The Investigators do *not* credit the subject complainant’s statements that the person hired for the position was not qualified and should not have been interviewed. The complainant did not appear to possess any relevant human resources experience, while the individual appointed did. (Exhibit 40). The Investigators find that the subject complainant made statements based on their subjective feelings, which were not supported by the materials reviewed.

The Investigators find that there is insufficient evidence to support that a policy violation occurred.

Allegation No. 17

The Investigators do *not* find by a preponderance of the evidence that there was bias in the hiring of the Bridge School Principal in June 2022.

The subject complainant alleged that the District appointed an out-of-district candidate to the position of Bridge School Principal and that this candidate was not qualified.

The relevant policy states with respect to administrative positions: “After a twenty (20) day posting period, a screening committee comprised of district administrators is formed to select the most qualified candidates. The most qualified candidates are those who meet the job/educational background/licensing requirements and are subsequently recommended for interview.” (Exhibit 13 at p. 6; Exhibit 47).

The Investigators find that the individual selected met the job/educational and background/licensing requirements and was therefore qualified.

Allegation No. 19

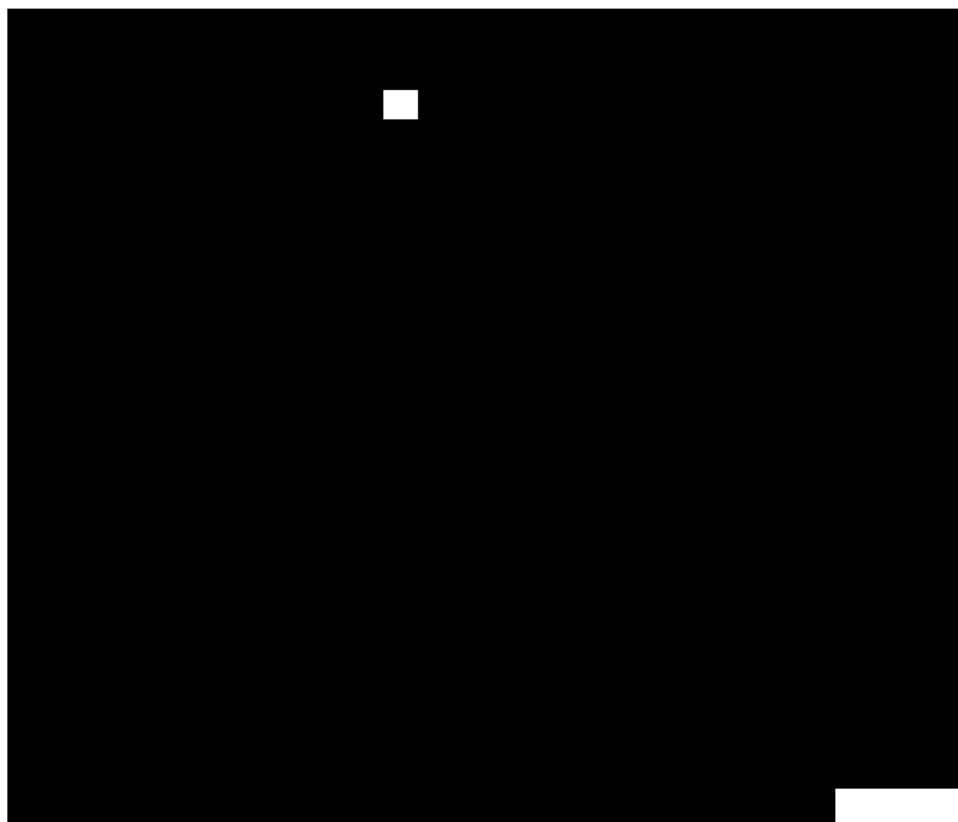
The Investigators do *not* find by a preponderance of the evidence that the hiring of the student support specialists in 2022 violated District policy.

In June of 2022, multiple student support specialist positions became available. The requirements for the position included that the candidate possess a valid teaching license in the Commonwealth of Massachusetts and a valid license for service as a Principal/Assistant Principal or Supervisor/Director in the Commonwealth of Massachusetts. (Exhibit 30). The posting did not state with clarity when the licensure must be obtained.

The subject complainant, who shared their complaint publicly, is a member of the UTL and filed a grievance pursuant to Article XIII, paragraph C of the UTL CBA, which speaks to posting requirements concerning UTL positions “other than classroom teacher.” (Exhibit 10). Specifically, the CBA states that, “No person shall be hired for such position unless he/she meets the posted qualifications as determined by the Committee.” (emphasis added).

The grievance asserted that “three of the applicants and eventual appointees did not possess the necessary DESE Administration licensure at the time of the posting of these positions.” (Exhibit 30).

The subject complainant’s grievance regarding the student support specialist position was predicated, in part, on a prior grievance decision from the previous year regarding a teacher who had been appointed without a license in place. The aforementioned Step 2 decision on the grievance upon which the complainant relied reads in relevant part:



(Exhibit 38, *Confidential* Grievance Decision dated August 15, 2022) First, as the Investigators believe is self-evident, the language in this decision is not particularly clear. It has also not been adopted in any formal policy. Nonetheless, the subject complainant relied on this decision when filing their grievance, claiming that certain applicants were not licensed at the time the position was posted. However, both the subject complainant’s position, and the Superintendent’s decision

cited above, appear to be at odds with what the complainant's CBA (UTL) actually states, which is that a candidate should not be "*hired*" unless they possess the necessary qualifications.¹³

Critically, the UTL differs from the LSAA CBA, Article XII, which states: "any member of the Association possessing the necessary qualifications may apply for such vacancies and all position applicants shall be considered when eligible." (Exhibit 11). This appears to suggest that the necessary qualifications should be in place at the time of the application, but also mandates (see use of term "shall") that applications be "considered" only when eligibility is satisfied, which they were in this case.

The District's Professional Staff & Hiring Policy requires (for administrative positions) that a screening committee select the most qualified candidates, which are defined as "those who meet the job/educational [&] background/licensing requirements and are subsequently recommended for interview." (Exhibit 13 at p. 4). This appears to presume that qualifications are in place pre-interview. However, the policy also states that "applicants must submit ... copy [sic] of the appropriate Massachusetts educator license to the Personnel Office prior to 4:00 p.m. on the posted closing date." (Exhibit 13 at p. 1). In this case, the posted closing date and interview date were separated by only one day.

The subject complainant is a member of the UTL who filed a grievance pursuant to Article XIII, paragraph C of the UTL CBA, which appears to restrict only *hiring* an applicant without the requisite qualifications in place.

There are also potential issues regarding standing for the complainant to have grieved issues with an LSAA position under the UTL, which the Investigators do not address here, as there does not appear to have been a violation of the UTL in this instance regardless of any procedural deficiencies. Notably, the LSAA also grieved the process, but that grievance was dismissed because the remedy sought was not available by contract. Nonetheless, the Superintendent granted the UTL grievance for different reasons, and the positions were re-posted.

The posted qualifications for the position at issue were: "Licensure valid for service as a teacher in the Commonwealth of Massachusetts"; "Licensure valid for service as a principal/assistant principal or Supervisor/Director in the Commonwealth of Massachusetts required." (Exhibit 30). The position was posted on June 6, 2022 with a deadline of June 21, 2022. Interviews of the selected candidates took place on June 22, 2022 and each of them held legally valid licenses on the date of interview.

¹³ The Investigators find that the former Superintendent's decision is not only inconsistent with the UTL CBA, but is also internally inconsistent as there is often a period of time when a person may bid on a job before it actually closes, which begs the question: if a person obtains a license during that window, after the posting, but before the interview and/or before the hiring decision is made, are they precluded from being considered? Is the cut off for licensing the date of posting, time of application, close of posting, date of interview request, or date of hire? On its face, the UTL policy, at least as written, appears to support the latter.

The first individual selected for the position had obtained an emergency license on June 22, 2022, but had applied for the position on June 21, 2022; in other words, at the time of the application and posted closing date, the person was not fully licensed but on the same date as the interview (and prior to hire), they were. (Exhibits 30 & 31).

The second individual selected for the position obtained an emergency license on June 15, 2022, which was before being interviewed and the posted closing date on June 21, 2022 (and prior to hire), but after the application was submitted. (Exhibits 30 & 31).

The third individual selected applied to *renew* their license on June 23, 2023, and received a renewed license on July 5, 2023, prior to being appointed on August 2, 2023 or their start date of August 15, 2023. (Exhibits 30 & 31). This individual possessed a lawfully issued emergency license at the time of application, before the posted closing date, and prior to hire.

The Commonwealth of Massachusetts recognized the aforementioned emergency licenses as valid. See 603 CMR 7.01; 7.04(1). M.G.L. c. 71, § 38G; DESE COVID-19 Standing Orders. Accordingly, the Investigators find that there was no policy violation insofar as the UTL (complainant's union) requires that a candidate possess the posted qualifications at the time of hire.

As for the fact that the licenses at issue were emergency licenses, such are permitted by law. See M.G.L. c. 71, § 38G; 603 CMR 7.01; 7.04(1); DESE COVID-19 standing orders. It is true that the language of the amended statute reads: "... nothing herein shall be construed to prevent a school committee from prescribing additional qualifications..." It does not appear that the School Committee has evaluated whether additional qualifications beyond a valid provisional or emergency license are necessary; however, in any event, they did not explicitly so state in the position posting. See Exhibit 30 (requiring "licensure valid for service as a teacher in the Commonwealth of Massachusetts" and requiring "licensure valid for service as a Principal/Assistant Principal or Supervisor/Director in the Commonwealth of Massachusetts.").

Insofar as the LSAA requirements are concerned, which assumedly govern the relevant positions at issue for LSAA applicants, that provision expressly affords protection solely to its members stating that "any member of the Association possessing the necessary qualifications may apply..." This permissive language would appear only to suggest that any LSAA members wishing to apply for LSAA positions should be qualified at the time of application. The wording of this provision could use improvement and should be amended after negotiation with the union to be made consistent with the second part of the mandate. The provision goes on to state that "all position applicants shall be considered when eligible." This renders "consideration" contingent on the definition of eligibility. This language does not plainly reconcile when qualifications must be in place. Thus, the question remains, what qualifies as triggering "consideration": the date of posting, time of application, close of posting, date of interview request, date of interview, or date of hire? If the applicants must possess the necessary qualifications at the time of application, then that should be made clear absent any ambiguity.

As stated, M.G.L. c. 71, § 38G as amended recognizes the right of the School Committee to include “additional” qualifications to job postings, which it declined (either consciously or unconsciously) to do here.

As for the District’s policy, it appears to require that all licensing be in place *before* a candidate is recommended for interview by a screening committee. (See Exhibit 13 at p. 4). However, as noted, this conflicts with express language presented earlier in the policy that licensure should be submitted by 4:00 p.m. on the posted closing date. Id. at p. 1. It appears that two of the three selected candidates possessed emergency licenses by the posted closing date, while the third secured their license by the date of their interview.

It is critical to note that a grievance was filed and the remedy sought was that the positions be re-posted, which they were. Even though the subject complainant disclosed that the subsequent process was tainted because the individuals selected were the same as those who had been selected in the first round, and felt that those candidates had been given an unfair advantage because they had served in those positions for several months before the revised process took place, it was not lost on the Investigators any more than it should be on the School Committee that the grievance process worked as intended and any perceived process deficiencies identified in the original grievance appear to have been corrected. There was insufficient evidence for the Investigators to conclude that the second round was tainted because of a purported unfair advantage held by the incumbents.

RECOMMENDATION: The Committee has not explicitly promulgated policies that clarify whether the District has formally adopted DESE regulations, or is rejecting them, which it may do. As a result, it is not at all clear whether the School Committee or District intends to honor emergency or provisional licensure as permitted by statute, although it appears to do so in practice and the Investigators recommend that the School Committee policy mirror the DESE regulations unless there is good cause to veer from them and only in narrowly tailored circumstances. The Investigators suggest that the School Committee work with both the Administration and unions to clarify this point.

Additionally, the LSAA CBA provision should be revised to eliminate ambiguity. Both the union and management should strive for clarity when further negotiating this provision.

As discussed, the District policy also contains conflicting and confusing language, see Exhibit 13 at p. 1 and 4, and this should be reconciled. This policy, in particular, is in need of attention.

These Investigators recommend that, to the extent possible and consistent with law and contract, that there be a uniform policy that permits applicants to be considered so long as they meet the minimum qualifications at the time of hire, which will permit the District to entertain the broadest pool of applicants with hiring, contingent on the candidate meeting all necessary licensing qualifications by a formal date of hire.

5. *Complaints relating to convening interview committees*

Allegation No. 17

The Investigators do not find by a preponderance of the evidence that interview policies were violated during the interviews conducted for the Bridge School Principal.

In June 2022, the Bridge School Principal position became available, which is an unaffiliated position. The subject complainant applied for the position and was a finalist. During their interview, an interviewer took a phone call, which signaled to the complainant that they were not being seriously considered for the position.

There are no policies covering interview etiquette.

RECOMMENDATION: The Investigators assume that it goes without saying that interviewers should be courteous during the interview process but also recognize that the interviewers and hiring managers, particularly in a school District, encounter emergencies that cannot be avoided.

Allegation No. 18

The Investigators do not find by a preponderance of the evidence that interview policies were violated during the hiring process for the Freshman Academy Assistant Principal Position.

The subject complainant alleged that in June 2022, when they applied for the Freshman Academy Assistant Principal position, an administrator took a phone call, which signaled to the complainant that they were not seriously being considered for the position. In addition, a person on the interview panel was a staff member with whom the complainant had previously had a negative interaction. There is presently no policy that covers who may and may not serve on interview panels except for requiring certain positions in specific circumstances.

The complainant alleged that the candidate selected should not have been interviewed because they were not qualified and did not possess a license. That allegation was unsupported by the evidence. (Exhibit 51).

RECOMMEDATION: The Investigators recommend that the School Committee define “administrator” for purposes of interview committee composition. The Professional Staff and Hiring Policy identifies two distinct types of committees that might be triggered when conducting interviews of candidates. For “administrator” positions, the committee to be utilized is referred to in the policies as a Personal Advisory Committee and was referred to in the Investigation interviews by various employees as a “supercommittee.” (Exhibit 13 at p. 6). This committee is comprised of an “8-member panel...for administrators” and includes: “(1) administrator, (2) teachers, (2) parents, (1) expert provider, (1) University or Higher Education Representative and (1) Community Representative.”

The “principal and senior administrative positions” provision contained within the Professional Staff and Hiring policy states:

For principal positions and senior administrative positions, the administrator responsible for hiring of a staff member shall form a screening panel comprised of at least 8 people, consisting of at least 1-2 administrators and 2-3 teachers. The panel shall also include three or more of the following: an expert provider, University or Higher Education Representative, parent, student, and/or a Community Representative depending upon the nature of the position in the panel convener's discretion.

(Exhibit 13 at p. 11).

The Investigators find that the utilization of such large interview committees when conducting interviews for positions that need to be filled quickly or that are not considered high-level or senior, simply for fear of violating an ambiguous policy, is unreasonable. A "supercommittee" should be reserved for senior level administrator positions that are explicitly defined. If there is a tier of positions that is appropriate for a smaller screening committee, the Investigators recommend that the School Committee and Administration work together to define this tier. For all other employee positions, it does not make sense for there to be a restrictive policy that only serves to restrain the hiring authority, and in those instances, the assembly of a screening or interview committee should be left to the discretion of the relevant hiring manager based on the circumstances, including timing and other factors. There should also be a process for the Superintendent, in circumstances where a full or mid-tier committee is required, to petition the School Committee for leave to modify that requirement when emergency circumstances might call for it.

Finally, any distinction between a screening and interview committee, and when each is warranted, should be clearly defined in the policy. Currently, it is not.

With regard to notice issues, the Investigators recommend that there be some process by which candidates are notified who will sit on a particular committee before they interview, so they can raise any issues concerning conflicts or biases and request that an interviewer be recused. Acceptable reasons for recusal must be spelled out by policy and ultimately should be referred to the hiring manager for a determination.

As for interview etiquette, it should not require a policy to ensure that interviewers remain present for the interview absent distraction. It is on the hiring managers to convey their expectations to committee members. However, the School Committee should consider a policy that requires hiring managers to apply their expectations consistently across all interviews.

Allegation No. 19

The Investigators do not find by a preponderance of the evidence that the committee composition tasked with conducting interviews for the 2022 Student Support Specialist position violated a policy.

The subject complainant alleged that there was a deficiency in the number of individuals who participated in the committee. It is not at all clear that the student support specialist position

was the type of position contemplated by the School Committee to be an “administrator” subject to a supercommittee. As a result, the Investigators do not find a policy violation by a preponderance of the evidence on this point.

The manner in which interviews were conducted is not presently covered by any policy.

RECOMMENDATION: See prior Recommendations for Allegations 18 & 19.

6. *Complaints relating to Lowell residents not being interviewed for positions.*

Allegation No. 24

The Investigators do not find by a preponderance of the evidence that the process for hiring the Assistant Principal of the An Wang Middle School position violated policy.

On May 21, 2022, the subject complainant applied for the position of Assistant Principal at the Dr. An Wang Middle School. The complainant was not granted an interview even though the complainant was a resident of Lowell.

On May 4, 2016, the School Committee voted unanimously to issue the following *request*: “Request the Superintendent to adopt a policy for interviewing applicants which mandates that Lowell residents receive interviews for jobs in the Lowell Public Schools.” (Exhibit 15). At the time of this request, Superintendent Khelfaoui was in office. He obliged this request by the School Committee and, after this motion was passed, followed an unwritten policy that Lowell residents be interviewed for positions. Superintendent Khelfaoui left the district in July 2018. No written policy was ever adopted.

While it is true there is no requirement that Lowell residents be *hired* (rather, the “request” was that they be interviewed), the Investigators note that the policy request itself is in tension with M.G.L. c. 71 § 38 which states:

No school district shall require that an individual reside within the city, town or regional school district as a condition of promotion, assignment, transfer or continued employment as a school teacher, instructional aide, assistant principal, principal, director, supervisor, deputy superintendent or professional employee; provided, however, that the provisions of this paragraph shall not apply to any individual appointed, reappointed or promoted to the position of superintendent, associate superintendent or assistant superintendent.

There is also a tension between the request and the District’s own policies, which state: “There will be no discrimination in the hiring process due to age, sex, creed, race, color, national origin, disability, sexual orientation or *place of residence*.” (emphasis added) (Exhibit 13 at p. 1).

RECOMMENDATION: If the District wishes to pass a policy concerning a requirement to interview Lowell residents, it should do so explicitly with the input of the Administration. The

Investigators caution the School Committee that it should be reluctant to pass such policy for the reasons articulated above, and it is the recommendation of the Investigators that this practice of the former Superintendent from 2018 and prior, based on a 2016 request, be reconsidered. The Investigators suggest that compelling interviews of otherwise unqualified candidates based on residency alone is not only impractical, but also potentially in conflict with the law.

7. *Complaints that Internal Applicants were not being considered*

Allegation No. 26

The Investigators do not find by a preponderance of the evidence that there was a policy violation in the hiring of the Moody School teaching position.

The subject complainant alleged that in 2022, they applied for a teaching position at the Moody School, a position available through the UTL. During the interview process, the complainant allegedly corresponded with an administrator of the O'Connell School, who requested their resume and letter of recommendation, which they forwarded. The complainant stated that the CBA mandates an interview for all internal applicants.

The Investigators find that this statement is unsupported by the record. Rather, the relevant CBA states: "Any teacher possessing the necessary qualification may apply for such vacancy and all applicants shall be considered. (Exhibit 9).

RECOMMENDATION: The provision in the SEIU CBA regarding what the Administration must do to "consider" internal candidates is not sufficiently clear. The District should explain what administrators must do if they are to adequately "consider" applicants or otherwise will continue to risk that this policy be inconsistently applied.

Allegation No. 27

The Investigators do not find by a preponderance of the evidence that there was a policy violation in the hiring of a teaching position at the Cardinal O'Connell School in 2022.

The subject complainant alleged that in 2022, they applied for a teaching position at the Cardinal O'Connell School. Although they were an internal candidate, they did not get an interview, which they felt was compelled by the UTL CBA. As explained in response to Allegation #26, above, this is not actually required by the CBA.

Allegation No. 7

The Investigators do not find by a preponderance of the evidence that there was a policy violation during the hiring process for the position of Student Support Specialist in 2021.

The subject complainant was a member of the LSAA and complained that they were not considered for a student support specialist position, an LSAA position. As a member of LSAA applying to an LSAA governed position, there was a contractual requirement to "consider" internal

candidates. Article XII-03 of the LSAA CBA states, “Any member of the Association possessing the necessary qualifications may apply for such vacancies and all position applicants shall be considered when eligible.” (Exhibit 11). The complainant was considered. There is no requirement, however, that an internal candidate be selected. Accordingly, the Investigators cannot conclude that there was a policy violation.

RECOMMENDATION: This language was discussed supra. The Investigators suggest that it is poorly written, confusing, and is ineffective in capturing the most diverse candidate pool. At the very least, the Investigators encourage the School Committee to work with the Administration and union to define what is meant by the fact that an applicant must be “considered.”

Nonetheless, this requirement as it stands might be at odds with the School Committee’s stated commitment to diversifying the District’s workforce. There were multiple complaints that the workforce was racially homogenous, which fell outside the scope of this Investigation; however, assuming *arguendo*, this is true, then compelling the Administration to “consider” internal candidates from a non-diverse pool might conflict with and/or detract from its diversity efforts. Forcing a hiring manager to blanketly “consider” internal candidates does not appear to function as a catalyst for diversity. Where there is any time-pressure to fill a position, the requirement can also function to unnecessarily delay the hiring process, and arguably detracts from the District’s interest in securing the best candidate for the role.

Allegation No. 8

The Investigators do not find by a preponderance of the evidence that there was a policy violation in the hiring of an administrator position in 2021.

In October 2021, the subject complainant, who was not affiliated with a union, applied and interviewed for a higher paying administrator role (one which they did not identify, but presumably an LSAA position). The complainant stated to the Investigators that Superintendent Boyd told them that they were not eligible for the role because he wanted them to stay in the position they currently had.

Even assuming that the complainant was entitled to the protections of the LSAA CBA, there is insufficient evidence to conclude that they were not “considered” for the position. Regardless, the Superintendent has the ultimate decision-making authority on matters of appointment such as this one. The Investigators do not find that it is a policy violation for the Superintendent to consider what vacancy might be left if an applicant is transferred when making appointments.

Allegation No. 8

The Investigators do not find by a preponderance of the evidence that there was a policy violation in the hiring of the Director of Student Resources Center position in 2022.

The subject complainant interviewed for the position. The complainant was not selected. The complainant alleged that they were not “considered” consistent with the LSAA CBA. The Investigators find that the allegation has no basis in fact and is unsupported by the evidence.

Allegation No. 31

The Investigators do not find by a preponderance of the evidence that there was a policy violation in the hiring of the Administrative Assistant position in 2022 because an internal candidate was not interviewed.

The subject complainant, who was unaffiliated with any union, alleged that they were not contacted for an interview for an open administrative position, which was an SEIU position. There is no language in the SEIU contract, nor in the District’s hiring policies, that require consideration of internal candidates. (Exhibits 12 & 13).

The District’s Professional Staff & Hiring policy states:

Unaffiliated staff

Voluntary transfer requests must be sent to the office of Finance and Operations in writing. These requests are complied [sic] then are e-mailed and faxed to principals with an accompanying interview for Employees requesting voluntary transfers must be interviewed as per collective bargaining agreement.

(Exhibit 13 at p. 6). There was no applicable CBA provision that mandated an interview of the complainant be awarded.

RECOMMENDATION: This policy is poorly worded and confusing, and should be revised. First, the SEIU collective bargaining agreement provides no such benefit, so the language should be made conditional. Second, when juxtaposed with the term “voluntary transfer” here, as opposed to how that term is used in the various CBAs, it creates confusion among both administrators and staff about what is required.

8. *Complaints of Nepotism*

Allegation No. 29

The Investigators do not find by a preponderance of the evidence that the nepotism policy or the policies related to the Compendium were violated by the transfer of an administrator’s family member in 2022.

The subject complainant alleged that the transfer of an administrator’s family member was a violation of the District’s policy against nepotism.

The single “policy” on nepotism provided to the Investigators was in the form of a motion, dated September 3, 2014 as follows:

A motion was made to recommend to the full School Committee that the legal opinion and recommendation of the City Solicitor's Office be rejected, and that the School Committee implement a ban on the hiring of immediate family members of School Committee members and administrators altogether, while grandfathering any previously hired family members.

(Exhibit 16 at p. 9). There was no evidence provided to the Investigators to support that the recommendation was ever made to the full committee or that the full committee ever implemented the "ban" referenced.

Assuming, for the sake of argument only, that there was such a policy in effect, the Investigators make the following findings:

The employee at issue was retained one year prior to the September 2014 motion. Accordingly, even if the ban had been adopted, it would presumably not function retroactively to remove employees and is therefore moot in this instance.

The complainant also suggested that the transfer was only permitted because of the influence of the candidate's spouse in the Administration, and that the position was not filled in accordance with the Compendium. Both of these allegations are unsupported by the evidence received and reviewed by these Investigators.

In 2022, an employee family member of an administrator was involuntarily transferred to the Reilly School at the request of the receiving school principal, and with the approval of the former Superintendent. The principal has the power to approve or disapprove transfers between buildings within the school district. Sch. Comm. Of Newton v. Newton Sch. Custodians Ass'n., Local 454, SEIU, 438 Mass. 739 (2003); Sch. Comm. Of Lowell v. United Teachers of Lowell, 12 Mass. L. Rptr. 672 (Super Ct. 2001). This discretion is nondelegable and cannot be negotiated away through collective bargaining. Lowell Sch. Comm. v. United Teachers of Lowell, 1997 WL 226224 (Mass. Super. Ct. Apr. 25, 1997); see also Berkshire Hills Reg'l Sch. Dist. v. Berkshire Hills Educ. Ass'n, 375 Mass. 522, 527-29 (1978).

Per the UTL CBA, the Superintendent's approval of a principal's transfer decision is "final and binding and not subject to arbitration." (Exhibit 10, Article XXVIII). As the employee at issue was involuntarily transferred, there was no Compendium requirement to advertise the position. The Investigators also find it noteworthy that contemporaneous records support that it was the principal at the school who initiated the transfer, not the employee. (Exhibit 39). The reason for transfer was also supported by the evidence, as the open position was vacated just prior to the academic year, with little notice, and needed to be filled quickly.

Meanwhile, the respondent administrator, concerned that there were employees who misperceived the transfer, supported placing the position on the Compendium, even though it did not qualify (see Exhibit 10, involuntary transfers not subject to Compendium). The union opposed posting the position. When the position was posted, no one else applied. It bears noting that the

complainant did not apply for the position occupied by the employee at issue when it was advertised on the Compendium and thus they are not comparators.

When the complainant requested a transfer around the same time, the Superintendent declined to involuntarily transfer the complainant because the position the complainant would be leaving vacant would be difficult to fill and there was not a similar need for expediency. The complainant was nonetheless offered the opportunity to take the position as a long-term substitute before the position was posted on School Spring where they could submit an application, but the complainant declined to do so.

The Investigators do not find by a preponderance of the evidence that any nepotism policy was violated, or that the complainant was treated differently because of the complainant's relative's alleged union advocacy.

RECOMMENDATION: The District should consider a policy that mirrors the Commonwealth's restrictions on nepotism.

8. *Complaints concerning notice of hiring decisions.*

As discussed below, the Investigators find by a preponderance of the evidence that a select few administrative candidates were not notified of hiring decisions consistent with District policy. With respect to administrator notifications, the policy states: "The Personnel Office notifies each [administrator] candidate of the decision." (Exhibit 13 at p. 6). This policy should be reworded as a directive if the intent is actually to require notice.

Allegation No. 23

The Investigators find by a preponderance of the evidence that at least one candidate who was interviewed was not notified of the hiring decision for the Assistant Principal of the Bridge Program in 2022.

Allegation No. 20

The Investigators find by a preponderance of the evidence that at least one candidate was not notified of the hiring decision for the Mental Health Director in 2022.

RECOMMENDATION: The Investigators recommend that the School Committee work with the Administration to streamline notification procedures and create a form that is both easily accessible and tailored for individuals who are not selected. The policy should also be reworded as a directive if the intent is actually to require notice, and clarify as to any timing requirement.

Analysis of Class 2 Complaints: Complaints Relating to Allegations of Bias

The Investigators note that some complainants were rather brazen when accusing others of being "unqualified," often times without actually knowing their qualifications and, in certain cases, levying claims of under qualification that had absolutely no basis in fact.

The natural consequence of the discussion below is that, even though the Investigators have taken careful measures to maintain confidentiality, it is impossible to prevent readers from making inferences that might impact morale, i.e. an employee infers that a co-worker complained that they were not qualified for a particular position. To that end, the Investigators reiterate that while they received forty-one (41) distinct complaints, there were only nineteen (19) individuals who complained out of more than 2000 employees.

Allegation No. 1

The Investigators do not find by a preponderance of the evidence that there was a policy violation in the hiring of the District Account Clerk position in 2019. There is no policy concerning who may be involved on an interview panel and who must recuse themselves from hiring decisions and on what basis. There is also no policy against hiring acquaintances or people with whom the hiring authority is friendly outside of work.

Therefore, the complainant's allegation of bias in the hiring process based on an alleged personal relationship between the candidate selected and the hiring manager does not constitute a policy violation. Further, it should be noted that this same complainant's claim that the appointee was not qualified is unsupported by the evidence.

Allegation No. 5

The Investigators do not find by a preponderance of the evidence that there was a policy violation in the hiring of the Executive Secretary to the Special Education Director position in 2020.

There is no policy that would prevent a candidate from being hired simply because they are friends with someone in the Human Resources Department so long as the qualifications for the role are met.

Allegation No. 16

The Investigators do not find by a preponderance of the evidence that there was a policy violation in the hiring of the Director of Freshman Academy position in 2022.

There is no policy that would prevent a candidate from being hired because simply because they are friendly with an administrator so long as the qualifications for the role are met.

Allegation No. 18

The Investigators do not find by a preponderance of the evidence that there was a policy violation in the hiring of the Freshman Academy Assistant Principal position in 2022.

There is no policy that would prevent a candidate from being hired simply because they are friendly with a principal so long as the qualifications for the role are met.

Allegation No. 15

The Investigators do not find by a preponderance of the evidence that there was a policy violation in the hiring of the Eighth Grade Coordinator position in 2022.

The complainant alleged that the candidate selected was not qualified for the position. In contrast, the record supports that the person selected met the minimum requirements for the position. (Exhibit 45).

Allegation No. 31

The Investigators do not find by a preponderance of the evidence that there was a policy violation in hiring the Administrative Assistant position in 2022.

The complainant applied for the open position, which is an SEIU position. The position was filled with a person who the complainant claimed was a friend of the hiring manager.

There is no policy that would prevent a candidate from being hired simply because they are friendly with the hiring manager so long as the qualifications for the role are met. The Investigators find that the minimum qualifications were met in this regard.

Allegation No. 2

The Investigators do not find by a preponderance of the evidence that there was a policy violation in hiring the Executive Secretary Position in 2019.

There is no Compendium requirement for SEIU positions. Contrary to what was reported, there is also no requirement that internal candidates be interviewed or considered for SEIU positions. The Investigators find that the complainant was confused by the language in the District's Professional Staff & Hiring policy, which states:

Voluntary transfer requests must be sent to the office of Finance and Operations in writing. These requests are complied [sic] then are e-mailed and faxed to principals with an accompanying interview for Employees requesting voluntary transfers must be interviewed as per collective bargaining agreement.

(Exhibit 13 at p. 6).

RECOMMENDATIONS: As explained above, the voluntary transfer policy for open labor services positions should be rewritten. It is both confusing and wanting in grammatical attention.

Allegation No. 3

The Investigators do not find by a preponderance of the evidence that there was a policy violation in the hiring of the Chief and Equity Engagement Officer position in 2019. There was no

requirement that candidates possess an Assistant Superintendent license at the time they applied. (See Exhibit 18). This requirement was added by the School Committee later.

Allegation No. 4

The Investigators do not find by a preponderance of the evidence that there was a policy violation in hiring the Facilities and Administration Assistant position in 2019 or in the change to the pay grade for that position.

On December 23, 2019, the SEIU position of Facilities and Administration assistant opened. It was advertised as a Grade 5 position. A longtime District employee was temporarily transferred to the open position from a role where they were being paid at Grade 7. That same employee applied for the role and was awarded it.

There are no provisions in the SEIU CBA or in the District's policies regarding involuntary transfers of SEIU members. As such, the Superintendent retains his authority to make or approve transfers within the District. The subject transfer was authorized by the former Superintendent.

The union also filed a grievance arguing that the open position of Facilities and Administration Assistant should be a Grade 6 or 7 position, rather than Grade 5. (Exhibit 21 at pp. 1-2). The School Committee held an executive session on February 5, 2020 and voted 7-0 to grant the grievance and change the position to a Grade 7 position. The evidence supports that the position pay was elevated at the request of the union and with the approval of the School Committee.

The hiring authority for this position also reported that the candidate participated in two rounds of interviews and that they were selected because they were the most qualified and is a longstanding employee of the District. (Exhibit 21).

This same complainant alleged that the subject hiring decision was based on race, alleging that the candidate chosen was selected because they identify as White. As stated, the Investigators were tasked with evaluating whether hiring policies were being followed. The materials produced support the decision to hire this candidate based on the position's minimum hiring qualifications, and the Investigators reviewed no independent evidence of race discrimination at play in this particular hiring decision. However, an allegation of individual race-based hiring is a matter of a personnel investigation, not a hiring policy review.

Allegation No. 9

The Investigators do not find by a preponderance of the evidence that there was a policy violation in hiring the Executive Secretary for the Office of Equity and Empowerment in 2021.

The complainant, who identifies as White, alleged that the position of Executive Secretary for the Office of Equity and Empowerment was filled by a non-White person. The complainant also alleged that there is a preference for hiring Hispanic candidates over White applicants within the District and reported that the "payroll department" is entirely Hispanic and "it's mind-boggling."

First, this allegation could have benefited from a more sensitive delivery. The Investigators suggest that District-wide sensitivity training be considered, as there were several instances where complaints were made using insensitive language.

Second, the employee who left the position of Executive Secretary for the Office of Equity and Empowerment, who was perceived by the complainant to be White, was transferred to a different position within the District. The Investigators received and reviewed no evidence that their replacement was not qualified.

The materials produced appear to support the decision to hire this candidate based on the position's minimum hiring qualifications, and the Investigators reviewed no independent evidence of race discrimination at play in this particular hiring decision. However, an allegation of individual race-based hiring is a matter of a personnel investigation, not a hiring policy review.

Allegation No. 14

The Investigators do not find by a preponderance of the evidence that there was a policy violation in the hiring of the Executive Secretary for Teaching and Learning in 2021.

In 2021, the complainant reported that the Executive Secretary of Teaching and Learning became available, and that the candidate selected was only chosen because they identify as Hispanic, and commented that the candidate selected "cannot type".

The application materials for the Executive Secretary for Teaching and Learning position support that the candidate selected met the minimum qualifications and had typing-related experience. (Exhibit 44). The race-related allegation falls outside of the scope of this Investigation; however, the Investigators do note that the hiring decision appears to have been supported and they received no competent evidence of race discrimination at play in this decision.

Allegation No. 19

The Investigators do not find by a preponderance of the evidence that there was a policy violation based on union-affiliated applicants for the Student Support Specialist positions in 2022 being the subject of anti-union bias.

The complainant alleged that they were discriminated against based on their advocacy as part of their union. The complainant was interviewed for the position by an *almost entirely* union affiliated panel, with the exception of two *students*, and was not recommended. There was no other competent evidence put forth to support this allegation. Therefore, the Investigators conclude that no policy violation occurred.

Allegation No. 38

The Investigators do not find by a preponderance of the evidence that there was a policy violation in the hiring of a secretarial position in 2023.

In 2023, a secretarial position became available, which is an SEIU position. The complainant alleges that they told their supervisor that they would not apply because they felt, due to their age, they would not be a favored candidate. According to the complainant, the supervisor relayed that the complainant would not be hired because they were part of a union.

The supervisor stopped responding to the Investigators' repeated attempts to conduct an interview. Nonetheless, the Investigators do not credit the complainant's statements, as the Investigators find, in their opinion, that the complainant made several inconsistent statements during the interview, which undermined their credibility with respect to this allegation. Additionally, the complainant never actually applied for the position, and the supervisor was not the hiring manager for the open role.

Analysis of Class 3 Complaints: Complaints That Fell Outside the Scope of the Investigation

Allegation No. 3

The complainant alleged that they believed there was a race-based motivation behind the School Committee's decision to change the licensing requirements after they were hired.

This allegation falls outside the scope of this Investigation and, thus, it was not fully investigated. The Investigators do note, however, that the justification of the School Committee and Administration was that the change was necessary to reconcile the licensing requirements of this position with other roles at the same level.

Allegation No. 8

The complainant alleged that, with respect to the Community Program Manager position, BIPOC employees were being paid less than their White counterparts, and that waivers had been issued for White individuals and not for BIPOC-identifying employees. The Administration disputed this claim and offered that a total of ten (10) waivers were issued, seven (7) of which were to BIPOC-identifying employees. The District conducted its own investigation into these allegations and they otherwise fall outside of the scope of this Investigation.

This complainant also made several complaints about their job duties and expectations that fall squarely outside the scope of this Investigation.

Allegation No. 12

While this complaint did not fall squarely within the scope of the Investigation, the Investigators do *not* find by a preponderance of the evidence that there was a policy violation arising from the posted summer 2021 position of Interim Assistant Principal, which is an LSAA position, at the Reilly School.

The complainant alleged that they were forced to accept the position without a reversionary interest in their current role, also an LSAA position. There is no contractual provision in the LSAA

CBA that governs reversionary interests. Rather, reversionary interests have been negotiated directly by assistant principals who are asked to fill in as principals on an interim basis. All three White male comparators cited by the complainant individually negotiated a reversionary interest under these limited circumstances.

RECOMMENDATION: The District should consider notice in its policies that it is the baseline expectation that reversionary rights are not present absent a CBA provision to the contrary or in situations where such rights are individually negotiated as part of a contract.

Allegation No. 22

The complainant reported feeling bullied by a school principal and another employee. The issue was grieved through the union. Thus, it falls outside the scope of this Investigation.

Allegation No. 21

The complainant, who identifies as Black, alleged that their supervisor generally discriminates against White people in favor of Black people. The complainant no longer works for the District. This allegation falls outside the scope of this Investigation.

Allegation No. 25

The complainant was terminated after a matter involving the Department of Children and Families, in which the complainant was criminally charged. The complainant alleges that, prior to their termination, the District imposed a “gag order” on them, requiring them not to speak about the incident, and suggested that the District should not have terminated them in the first place.

This allegation falls outside the scope of this Investigation.

Allegation No. 8

The complainant alleged that their supervisor discouraged them from applying for a position because the complaint prioritized their family over work and might have a hard time working the required evening or weekend hours. This allegation falls outside the scope of this Investigation.

Allegation No. 32

In the fall/winter 2022, the complainant alleged that a supervisor told them that they would be taking an adverse action against a staff member for their participation in a School Committee hearing. No adverse action was ever taken, nor was the staff member ever threatened with any adverse action. Nonetheless, this allegation falls outside the scope of this Investigation.

Allegation No. 33

The complainant alleged that an elected official provided false information regarding their child's residency and suggested that the student was nonetheless permitted to enroll in the District. This allegation falls squarely outside the scope of this Investigation.

Allegation No. 34

In November 2022, the complainant served in two positions and was transferred to a position with a shorter working calendar. The complainant speculated that the decision might have been based on their age but offered no evidence to support this. Nonetheless, this allegation falls outside the scope of this Investigation.

Allegation No. 34

The complainant applied for an open position and complained about the interview committee process. This was investigated by the District with no policy violations found, and the Investigators reviewed no evidence to contradict this finding. The complainant also alleged that the candidate selected was chosen because of their race, and was not qualified. This allegation falls outside the scope of this Investigation, but the Investigators note that the candidate selected does appear to have met the minimum qualifications for the position.

Allegation No. 39

The complainant alleged that they were performing work outside of their job description. This allegation falls squarely outside the scope of this Investigation.

Complaints Received Post Interview Cut-Off

Allegation Nos. 40 & 41

As explained in the Scope of Investigation section above, the Investigators provided notice that they would not be accepting complaints after May 29, 2023. Nonetheless, they received additional complaints via email involving allegations of retaliation for participation in this Investigation.

Notably, while not fully investigated for reasons explained in this Report, the Investigators note that they did not disclose the complainants' participation in the Investigation to any of the individuals supposedly responsible for taking any "adverse action" against the complainants. However, further follow-up by the appropriate personnel might be warranted.

RECOMMENDATION: The School Committee should request that the Superintendent review the two complaints of retaliation and the facts presented herein relating to them to decide what, if any, further investigation might be appropriate. It is possible that the complainants themselves shared their participation in the Investigation with decisionmakers or others, and they should be interviewed by the Administration to determine if any further investigation is warranted.

As the Investigators find that these reports were of the nature that they should be considered as individual personnel matters that fall outside the scope of this Investigation, unless instructed by the Superintendent, the Investigators cannot participate in the evaluation of these two complaints and refrain from doing so here.

CLOSING REMARKS

The District employs in excess of 2000 individuals to serve the School community. The District, including the School Committee, and School administrators, employees, and staff, should be singularly focused on how to foster an inclusive and diverse school community that empowers students to achieve academic excellence, while striving to retain educators with the highest qualifications and attributes necessary to achieve that goal.

To that end, the District must commit and recommit to seeking out and supporting the most qualified candidates for positions, and to promulgating policies and procedures that provide clarity, consistency, and transparency in hiring to its employees. The Investigators recognize that there is a patchwork of law and policy to consider when creating stronger, clearer, and more effective policies, and welcome the opportunity to counsel the School Committee, and work with the Administration, to improve the status quo.

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